

Revision to the  
New Hampshire  
State Implementation Plan

Certification of State Implementation Plan Adequacy  
Regarding Clean Air Act Section 110(a)(1) and (2) for the  
2010 Primary 1-Hour Sulfur Dioxide NAAQS

September 13, 2013



Air Resources Division

## Certification of State Implementation Plan Adequacy Regarding Clean Air Act Section 110(a)(1) and (2) for the 2010 Primary 1-Hour Sulfur Dioxide NAAQS

### Purpose

This document certifies to the U.S. Environmental Protection Agency (EPA) that New Hampshire's State Implementation Plan (SIP) fulfills the "infrastructure" requirements established in sections 110(a)(1) and (2) of the Clean Air Act (CAA) for sulfur dioxide (SO<sub>2</sub>).<sup>1</sup>

### Background

The CAA requires EPA to set National Ambient Air Quality Standards (NAAQS) for pollutants considered harmful to public health and the environment. National standards exist for six criteria pollutants: ozone, particulate matter, carbon monoxide, sulfur dioxide, nitrogen dioxide, and lead. For each of these pollutants, section 109 of the CAA requires EPA to set the health-based, or *primary*, standards at levels judged to be "requisite to protect the public health with an adequate margin of safety." The CAA also requires EPA to establish *secondary* standards that are "requisite" to protect public welfare from "any known or anticipated adverse effects associated with the pollutant in the ambient air," including effects on vegetation, soils, water, wildlife, buildings and national monuments, and visibility.

On June 2, 2010, EPA strengthened the primary NAAQS for sulfur dioxide by promulgating a revised standard based on *1-hour average* concentrations. EPA set the new 1-hour SO<sub>2</sub> NAAQS at the level of 75 parts per billion (ppb). (See [75 FR 35520](#).) This change did not affect the secondary SO<sub>2</sub> NAAQS, which EPA addressed in a separate rulemaking. (See [77 FR 20218](#).)

In establishing the new 1-hour SO<sub>2</sub> standard, EPA simultaneously replaced and revoked the existing *24-hour* and *annual* primary SO<sub>2</sub> standards because they would not provide additional public health protection with the 1-hour standard in effect. EPA's evaluation of the scientific data and the health risks posed by breathing SO<sub>2</sub> indicate that the new standard will protect public health by reducing people's exposure to high, short-term (5-minute to 24-hour) concentrations of SO<sub>2</sub>. The revised standard will benefit susceptible groups, especially children, the elderly, and people with asthma.

Section 107(d) of the CAA requires that, after receipt of recommendations from the states and within two years after promulgation of a NAAQS (or within three years if information is insufficient to make the designations within two years), EPA must designate all areas of the country as *attainment* (meeting the standard), *nonattainment* (not meeting the standard), or *unclassifiable* on the basis of available information. On July 25, 2013, EPA designated portions of Hillsborough, Merrimack, and Rockingham Counties as a nonattainment area. (See [78 FR 47191](#).) The Central New Hampshire Nonattainment Area includes a contiguous area of 14 cities and towns in New Hampshire: Goffstown, Allenstown, Bow, Chichester, Concord, Dunbarton,

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<sup>1</sup> Sulfur dioxide (SO<sub>2</sub>) is one of a group of highly reactive gasses known as oxides of sulfur. The largest sources of SO<sub>2</sub> emissions are from fossil fuel combustion at power plants (73%) and other industrial facilities (20%). Smaller sources of SO<sub>2</sub> emissions include industrial processes such as extracting metal from ore; the combustion of fuel oil for residential and commercial heating (especially in the Northeast); and the burning of high-sulfur fuels by locomotives, large ships, and non-road equipment. Human exposure to sulfur dioxide is associated with a number of adverse effects on the respiratory system.

Epsom, Hooksett, Loudon, Pembroke, Pittsfield, Candia, Deerfield, and Northwood. EPA also indicated that it was not ready to issue designations for the remaining areas of New Hampshire and would address this matter in separate future action(s).

Apart from the designation process and pursuant to section 110(a)(1) of the CAA, states are required to submit State Implementation Plans meeting the provisions of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP elements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. EPA has determined that these infrastructure SIPs do not have to address certain elements pertaining to nonattainment areas because those elements are covered separately in SIP revisions known as attainment plans.<sup>2</sup> States were required to submit infrastructure SIPs for the 2010 1-hour SO<sub>2</sub> NAAQS to EPA by June 3, 2013.

### **New Hampshire's SIP Revision**

The submittal of this document is intended to meet New Hampshire's obligations under the CAA with respect to section 110(a)(1) and (2) for the 2010 1-hour SO<sub>2</sub> primary National Ambient Air Quality Standards. The following pages describe in summary form how New Hampshire's SIP meets these requirements with specific reference to subsections 110(a)(2)(A) through (M).

In addition, New Hampshire is submitting for EPA's approval updated state statutes, codified at RSA 125-C, to take the place of RSA 125 in the SIP. The updated statutes are presented as Attachment 1. A comparison of the two sets of statutes is included as Attachment 2. Two other laws, codified at RSA 125-O, are also being submitted for approval as part of the SIP, and are included as Attachment 3.

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<sup>2</sup> EPA's original concept for implementation of the revised standard was described in "Guidance for 1-Hour SO<sub>2</sub> NAAQS SIP Submissions," Public Review Draft, September 22, 2011. That guidance stated, in part:

For areas designated nonattainment, states will follow the more common and familiar attainment planning and emissions control requirements of CAA part D, section 172 and 191-192. For all other areas, states are expected to follow the more general requirements of CAA section 110(a). In the context of the 1-hour SO<sub>2</sub> NAAQS, EPA believes this means states are expected to develop and submit SIPs showing that all areas of the state will attain and maintain the 1-hour SO<sub>2</sub> NAAQS. This should be accomplished by evaluating whether significant sources of SO<sub>2</sub> emissions, either individually or in combination with other nearby sources, cause or contribute to violations of the 1-hour SO<sub>2</sub> NAAQS. Where sources of SO<sub>2</sub> are determined to cause or contribute to NAAQS violations, states should include in the 110(a)(1) SIPs sufficient permanent and enforceable control measures to ensure the NAAQS is attained and maintained as expeditiously as practicable. For the short-term 1-hour SO<sub>2</sub> standard, EPA believes it is more accurate and efficient to use modeling to assess medium to larger sources and to rely on monitoring for groups of smaller sources and sources that may not be as conducive to modeling.

In subsequent communications with the states (New Hampshire's letter was dated April 12, 2012), EPA provided the following revision:

In light of the potential this process has to affect our recommendations for how to address the SO<sub>2</sub> NAAQS in areas initially designated "unclassifiable," we no longer expect your state's June 2013 SIP submittals to contain modeling demonstrations showing attainment of the standard in unclassifiable areas, as was outlined in the final SO<sub>2</sub> NAAQS rule and described further in the draft implementation guidance...

...Therefore, we recommend for now that states focus their 2013 SIP submittals on the traditional infrastructure elements of Clean Air Act sections 110(a)(1) and (2), rather than on modeling demonstrations showing future attainment of the standard by a fixed date for unclassifiable areas.

## Summary Description of New Hampshire's Compliance with Clean Air Act Section 110(a)(1) and (2) SIP Requirements for SO<sub>2</sub>

### ► Subsection 110(a)(2)(A): Emission Limits and Other Control Measures

#### CAA<sup>3</sup> Citation:

"Each such plan shall...include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions or emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act."

#### Applicable NH Laws and Regulations:

- [RSA 125-C: Air Pollution Control](#)
  - [RSA 125-C:10-a](#) establishes SO<sub>2</sub> emission limits for certain municipal waste combustors, as defined in RSA 125-M:2, XI.
- [RSA 125-O: Multiple Pollution Reduction Program](#)
  - [RSA 125-O:1](#), V establishes the need for substantial reductions in emissions of SO<sub>2</sub>, NO<sub>x</sub>, mercury, and CO<sub>2</sub> at New Hampshire's existing fossil fuel burning steam electric power plants.
  - [RSA 125-O:3](#) requires NHDES to implement an integrated, multi-pollutant strategy to achieve such emission reductions. The strategy includes a market-based trading and banking program that enables affected sources to meet statewide annual emission caps. This statute sets the statewide annual emissions cap for SO<sub>2</sub> at 7,289 tons annually.

The following regulations have high relevance to, but are not inclusive of all regulations for, the control of SO<sub>2</sub>:

- [Env-A 300: Ambient Air Quality Standards](#)<sup>4</sup>
  - Env-A 304.01: Primary and Secondary Ambient Air Quality Standards for Sulfur Dioxide
  - Env-A 304.02: Determination of Attainment of SO<sub>2</sub> Standard
  - Env-A 304.03: Measurement for SO<sub>2</sub> Attainment Determination
- [Env-A 500: Standards Applicable to Certain New or Modified Facilities...](#)<sup>5</sup>
  - Env-A 503: New Source Performance Standards
- [Env-A 600: Statewide Permit System](#)<sup>6</sup>
  - Env-A 607 Temporary Permits

<sup>3</sup> CAA refers to the Clean Air Act. CFR refers to the U.S. Code of Federal Regulations. EPA refers to the U.S. Environmental Protection Agency. NHDES refers to the New Hampshire Department of Environmental Services. RSA refers to the New Hampshire Revised Statutes Annotated. Env-A refers to the New Hampshire Code of Administrative Rules for the Control of Air Pollution.

<sup>4</sup> NH amended Env-A 300: Ambient Air Quality Standards, effective September 1, 2012. NHDES submitted the amended rule as a SIP revision for EPA's approval on November 8, 2012.

<sup>5</sup> Env-A 500: Standards Applicable to Certain New or Modified Facilities and Sources of Hazardous Air Pollutants incorporates by reference the federal New Source Performance Standards, but this rule is not part of the SIP.

<sup>6</sup> NH amended Env-A 600: Statewide Permit Systems, effective September 1, 2012. NHDES submitted the amended rule, including updates to Env-A 607, 608, 611, 618, 619, and other parts, as a SIP revision for EPA's approval on November 15, 2012.

- Env-A 608 State Permits to Operate
- Env-A 611 General Acid Rain Permitting Requirements
- Env-A 618: Nonattainment New Source Review
- Env-A 619: Prevention of Significant Deterioration
- [Env-A 700: Permit Fee System](#)
- [Env-A 1600: Fuel Specifications](#).<sup>7</sup>
- [Env-A 2300: Mitigation of Regional Haze](#)
- [Env-A 3300: Municipal Waste Combustion](#).<sup>8</sup>
- [Env-A 3500: Hospital/Medical/Infectious Waste Incineration](#).<sup>9</sup>
- [Env-A 4300: Other Solid Waste Incineration](#).<sup>10</sup>

### ► Subsection 110(a)(2)(B): Ambient Air Quality Monitoring/Data System

#### CAA Citation:

"Each such plan shall...provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator."

#### Applicable NH Laws and Regulations:

- RSA 125:81 Powers and Duties of the Agency (recodified as [RSA 125-C:6 Powers and Duties of the Commissioner](#))
  - RSA 125:81, IV (recodified as RSA 125-C:6, IV), authorizes the agency to collect and disseminate the results of studies relating to air quality.
  - RSA 125:81, V (recodified as RSA 125-C:6, V), authorizes the agency to consult and cooperate with agencies of the federal government.

#### Additional Information:

NHDES routinely collects and reports ambient air quality data for SO<sub>2</sub> and other pollutants in accordance with EPA-approved methods. These data are reviewed and validated before being sent to EPA's Air Quality System (AQS) no later than 90 days after the end of a calendar quarter. In accordance with [40 CFR 58](#), NHDES submitted a [2013/2014 air monitoring network plan](#) on August 8, 2013, for EPA approval.

EPA's initial designation of the Central New Hampshire Nonattainment Area for the 1-hour

<sup>7</sup> NH adopted Env-A 1600: Fuel Specifications (formerly numbered Env-A 400), effective December 24, 1990. EPA approved this rule into the SIP. NH readopted this rule on May 29, 1997, and April 23, 2005. NHDES submitted the 1997 rule on November 14, 2003, and the 2005 rule on September 14, 2005, as SIP revisions for EPA's approval. NH is again readopting this rule and will submit it as a SIP revision when NHDES submits the SO<sub>2</sub> attainment plan for the 1-hour NAAQS.

<sup>8</sup> NH adopted this rule pursuant to CAA sections 111(d) and 129 as part of an EPA-approved state plan. This rule is significant for the control of SO<sub>2</sub> emissions but was not developed to meet a specific requirement of section 110.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

primary SO<sub>2</sub> NAAQS (see [78 FR 47191](#)) was based on 2009-2011 certified air quality data collected from the established monitoring network. In a related agency [release](#)<sup>11</sup>, EPA presented its strategy for completing all remaining initial area designations for the 1-hour standard. Consistent with this strategy, the task of completing area designations for the rest of New Hampshire may require additional revisions to the state's air monitoring network plan.

### ► Subsection 110(a)(2)(C): Program for Enforcement of Control Measures

#### CAA Citation:

"Each such plan shall...include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D."

#### Applicable NH Laws and Regulations:

- RSA 125:90-93 (recodified as [RSA 125-C:11](#)), provides for a statewide permit program.
- RSA 125:82 (recodified as [RSA 125-C:15](#), I) authorizes the agency to issue orders to correct violations.
- RSA 125:85 (recodified as RSA 125-C:15, II) authorizes the agency to obtain injunctive relief to prevent violations.
- RSA 125:86 (recodified as RSA 125-C:15, I-b) authorizes the agency to impose fines for violations of statutes and rules.
- Env-A: Temporary Permits requires that any owner/operator of a new or modified stationary source or device obtain a temporary permit prior to construction or installation of the source or device if it is of a specified type and/or capacity.

#### Additional Information:

The above-listed statutes provide legal authority for the enforcement of [Env-A 618: Nonattainment New Source Review](#) and [Env-A 619: Prevention of Significant Deterioration](#).

### ► Subsection 110(a)(2)(D): Interstate Transport

#### CAA Citation:

"Each such plan shall...contain adequate provisions – (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will – (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement)."

<sup>11</sup> EPA, "Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard," February 6, 2013.

**Applicable NH Laws and Regulations:**

- [Env-A 619: Prevention of Significant Deterioration](#) protects air quality in downwind SO<sub>2</sub> attainment areas.
- [Env-A 2300: Mitigation of Regional Haze](#) establishes SO<sub>2</sub> emission limitations for certain emission sources in partial fulfillment of the requirements of section 169A and the Regional Haze Rule. (See [64 FR 35714](#) and [40 CFR 51 subpart P.](#))

**Additional Information:**

As described in a [memorandum](#)<sup>12</sup> to the states, EPA does not intend to make findings with respect to paragraph 110(a)(2)(D)(i)(I) while the agency awaits resolution of legal matters related to the Cross-State Air Pollution Rule (CSAPR). Accordingly, New Hampshire will await further guidance from EPA before making any additional submission to address this SIP element. Note that EPA has taken no final action against New Hampshire, nor does the state have any pending obligation, under section 115 or section 126.

**► Subsection 110(a)(2)(E): Adequate Resources****CAA Citation:**

"Each such plan shall...provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision."

**Applicable NH Laws and Regulations:**

- RSA 125:81 (recodified as [RSA 125-C:6](#)) authorizes the NHDES Commissioner to enforce the state's air laws, establish a permit program, accept and administer grants, and exercise all incidental powers necessary to carry out the law.
- [RSA 21-O:11, I Statement of Purpose and Findings](#)<sup>13</sup> establishes the NH Air Resources Council, a state board that has the authority to hear enforcement and permit appeals. The Council consists of 11 members, 6 of whom must represent the public interest. Those representing the public interest may not derive any significant portion of their income from persons subject to permits or enforcement orders, and may not serve as attorney for, act as consultant for, serve as officer or director of, or hold any other official or contractual relationship with any person subject to permits or enforcement orders.

<sup>12</sup> EPA memorandum, Gina McCarthy to Regional Air Division Directors, "Next Steps for Pending Redesignation Requests and State Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule," November 19, 2012.

<sup>13</sup> NHDES submitted this law as a SIP revision for EPA's approval on December 31, 2012.



**Additional Information:**

New Hampshire's SIP, originally submitted on January 27, 1972, and subsequently revised, describes the (a) existing organizations, (b) manpower, (c) funding, (d) physical resources, and (e) local agencies as required under this subsection. Note, however, that New Hampshire does not rely on any local or regional government, agency, or instrumentality for the implementation of any SIP provision.

Personnel, material resources, and funding have been adequate to support New Hampshire SIP obligations. Funding for NHDES's Air Resources Division comes from EPA grants (approximately 28% of the FY 2014 budget), permit/program fees and other (70%), and New Hampshire's general fund (2%). While the New Hampshire Code of Administrative Rules controls the setting of certain fees (e.g., permit application fees and emissions fees), the New Hampshire General Court controls the allocation of general revenues. Emissions fees are reviewed and adjusted annually for inflation and emission fluctuations, as specified by rule. General revenues are allocated through the biennial legislative budget process and become law upon signature by the governor.

**► Subsection 110(a)(2)(F): Stationary Source Emissions Monitoring and Reporting****CAA Citation:**

"Each such plan shall...require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection."

**Applicable NH Laws and Regulations:**

- RSA 125:81, XI (recodified as [RSA 125-C:6](#), XI) authorizes the agency to require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the agency on the nature and amounts of emissions from such stationary sources. The agency shall have the authority to make such data available to the public and as correlated with any applicable emission standards.
- [Env-A 600: Statewide Permit System](#), paragraph 609.06(b)(8), requires a compliance assurance monitoring (CAM) plan, if required by [40 CFR 64](#).
- [Env-A 800: Testing and Monitoring Procedures](#) establishes minimum testing and monitoring procedures, calculation procedures, standards, and requirements in order to determine compliance with applicable state and federal statutes and rules. This chapter includes the following relevant parts:
  - Env-A 802: Compliance Stack Testing for Stationary Sources
  - Env-A 806: Sulfur Content Testing of Fuels
  - Env-A 808: Continuous Emission Monitoring
  - Env-A 809: Approval of Alternate Methods
  - Env-A 810: Air Pollution Control Equipment Monitoring Plan; Additional Testing and Monitoring



- [Env-A 900: Owner or Operator Recordkeeping and Reporting Obligations](#) establishes the requirement that records be kept at sources which discharge air pollutants so that the emissions of such pollutants may be readily calculated or estimated and reported to NHDES for the purposes of demonstrating compliance, compiling emission inventories, and developing air related strategic plans. This chapter includes the following relevant parts:
  - Env-A 902: Availability of Records (See note below.)
  - Env-A 903: General Recordkeeping Requirements
  - Env-A 906: Additional Recordkeeping Requirements
  - Env-A 907: General Reporting Requirements
  - Env-A 910: Additional Reporting Requirements
  - Env-A 911: Recordkeeping and Reporting Requirements for Permit Deviations

Note: Env-A 902.01(d) reads: “Subject to [Env-A 103](#), all data submitted to the division, including emission data and applicable emission limitations, shall be made available to the public.” Env-A 103 provides a mechanism by which a person who submits information to the director can protect confidential information, to the extent permitted under [RSA 125-C:6](#), VII, which establishes that emission data are not considered confidential information.

### ► Subsection 110(a)(2)(G): Emergency Power

#### CAA Citation:

"Each such plan shall...provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority."

#### Applicable NH Laws and Regulations:

- RSA 125:84 (recodified as [RSA 125-C:9](#)) states: “Whenever the director finds that an air pollution emergency exists requiring immediate action to protect the public health, welfare, or safety, he may with consent of the governor and council issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith. The director shall rescind or abate such order as soon as the emergency ceases to exist.”

#### Additional Information:

The cited law grants NHDES broad statutory authority to address activities causing imminent and substantial endangerment to public health. Under extraordinary circumstances, it is possible that excessive emissions of SO<sub>2</sub> would cause an imminent concern for public health. Of relevance is New Hampshire’s classification as a Priority II region for sulfur dioxide. [40 CFR 51.150](#)(d) defines a Priority II region as any area which has ambient SO<sub>2</sub> concentrations in the following ranges: 60-100 µg/m<sup>3</sup> (0.02-0.04 ppm), annual arithmetic mean; 260-445 µg/m<sup>3</sup> (0.10-0.17 ppm), 24-hour maximum; or any concentration above 1,300 µg/m<sup>3</sup> (0.50 ppm), three-hour average.

The three tables below present ambient SO<sub>2</sub> concentrations at six monitoring stations in New Hampshire for the period 2005-2012. The first table gives the annual mean concentration. At no time did the annual value equal or exceed the 0.02 ppm threshold anywhere in the state.

**SO<sub>2</sub> Ambient Concentrations (ppm): Annual Value in Each Year, 2005-2012**

Monitor Loc.	AQS Number	2005	2006	2007	2008	2009	2010	2011	2012
Concord*	33-013-1007	0.003	0.001	--	--	--	--	0.001	0.001
Londonderry	33-015-0018	--	--	--	--	--	--	0.001	0.001
Manchester**	33-011-0020	0.005	0.003	0.003	0.003	0.002	0.002	0.002	0.001
Pembroke*	33-013-1006	0.007	0.006	0.007	0.005	0.008	0.011	0.007	0.001
Peterborough	33-011-5001	--	--	--	--	--	--	0.001	0.001
Portsmouth	33-015-0014	0.003	0.003	0.002	0.002	0.002	0.002	0.001	0.001

\*Monitor is located within designated nonattainment area.

\*\*Monitor was discontinued in Q2 of 2012.

The second table gives the highest 3-hour rolling average concentration and the number of times the 3-hour value equaled or exceeded 0.50 ppm in each year. At no time was this threshold reached anywhere in the state.

**SO<sub>2</sub> Ambient Concentrations (ppm): Highest 3-Hour Value and Number of Times the 3-Hour Value Equaled or Exceeded 0.50 ppm in Each Year, 2005-2012**

Monitor Loc.	AQS Number	2005	2006	2007	2008	2009	2010	2011	2012
Concord*	33-013-1007	0.078 (0)	0.065 (0)	--	--	--	--	0.091 (0)	0.026 (0)
Londonderry	33-015-0018	--	--	--	--	--	--	0.023 (0)	0.005 (0)
Manchester**	33-011-0020	0.056 (0)	0.054 (0)	0.061 (0)	0.055 (0)	0.070 (0)	0.064 (0)	0.071 (0)	0.014 (0)
Pembroke*	33-013-1006	0.149 (0)	0.150 (0)	0.165 (0)	0.297 (0)	0.220 (0)	0.273 (0)	0.209 (0)	0.042 (0)
Peterborough	33-011-5001	--	--	--	--	--	--	0.009 (0)	0.004 (0)
Portsmouth	33-015-0014	0.073 (0)	0.076 (0)	0.048 (0)	0.052 (0)	0.038 (0)	0.035 (0)	0.047 (0)	0.024 (0)

First value is maximum recorded 3-hour concentration.

Value in ( ) is number of times the 3-hour concentration exceeded 0.50 ppm.

\*Monitor is located within designated nonattainment area.

\*\*Monitor was discontinued in Q2 of 2012.

The third table gives the highest 24-hour concentration and the number of times the 24-hour concentration equaled or exceeded 0.10 ppm in each year.

**SO<sub>2</sub> Ambient Concentrations (ppm): Highest 24-Hour Value and Number of Times the 24-Hour Value Equaled or Exceeded 0.10 ppm in Each Year, 2005-2012**

Monitor Loc.	AQS Number	2005	2006	2007	2008	2009	2010	2011	2012
Concord*	33-013-1007	0.018 (0)	0.013 (0)	--	--	--	--	0.028 (0)	0.006 (0)
Londonderry	33-015-0018	--	--	--	--	--	--	0.009 (0)	0.004 (0)
Manchester**	33-011-0020	0.022 (0)	0.018 (0)	0.019 (0)	0.017 (0)	0.019 (0)	0.014 (0)	0.025 (0)	0.007 (0)
Pembroke*	33-013-1006	0.057 (0)	0.075 (0)	0.083 (0)	0.053 (0)	<b>0.112</b> (1)	<b>0.125</b> (4)	<b>0.100</b> (1)	0.008 (0)
Peterborough	33-011-5001	--	--	--	--	--	--	0.004 (0)	0.003 (0)
Portsmouth	33-015-0014	0.028 (0)	0.020 (0)	0.018 (0)	0.025 (0)	0.015 (0)	0.015 (0)	0.014 (0)	0.006 (0)

First value is maximum recorded 24-hour concentration.

Value in ( ) is number of times the 24-hour concentration exceeded 0.10 ppm.

\*Monitor is located within designated nonattainment area.

\*\*Monitor was discontinued in Q2 of 2012.

As the last table shows, the Central New Hampshire Nonattainment Area is the only area of New Hampshire to have experienced ambient 24-hour SO<sub>2</sub> concentrations in the Priority II range; and even there, 24-hour SO<sub>2</sub> concentrations have rarely exceeded 260 µg/m<sup>3</sup> (0.10 ppm). The recent installation of advanced SO<sub>2</sub> control technology further diminishes the probability of future excursions above this level.

Air quality information is continuously available to the public on EPA and NHDES websites. New Hampshire participates in EPA's [AIRNOW](#) and [EnviroFlash](#) systems, which provide real-time air quality index (AQI) values and forecast alerts based on ambient ozone and fine particulate matter concentrations. The AIRNOW website provides a direct link to NHDES's [Air Quality Current Data](#) page, which displays real-time monitoring data for ozone, PM, and SO<sub>2</sub>.

### ► Subsection 110(a)(2)(H): Future SIP revisions

#### CAA Citation:

"Each such plan shall...provide for revision of such plan – (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act."

#### Applicable NH Laws and Regulations:

- RSA 125:81 (recodified as [RSA 125-C:6](#)) provides as follows: "In addition to the other powers and duties granted herein, the agency shall have and may exercise the following powers and duties:...II. To develop a comprehensive program and provide services for the study, prevention and abatement of air pollution;..."
- [Env-A 204: Public Hearings on the State Implementation Plan](#) sets forth the procedure for SIP hearings.

#### Additional Information:

As evidence of New Hampshire's commitment to fulfilling the requirements of this subsection, NHDES has made numerous SIP revisions in the past for the purpose of meeting the National Ambient Air Quality Standards. (See [EPA's SIP Summaries and Rulemakings](#) for documentation.)

### ► Subsection 110(a)(2)(I): Areas Designated Nonattainment

#### CAA Citation:

"Each such plan shall...in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas)."

**Applicable NH Laws and Regulations:** See below.

#### Additional Information:

In accordance with an EPA [memorandum](#),<sup>14</sup> the agency does not expect infrastructure SIP submissions to address subsection 110(a)(2)(I); nonattainment area plans required under part D follow a different schedule from the section 110 infrastructure elements and are reviewed and acted upon through a separate process.

<sup>14</sup> EPA Memorandum, Stephen D. Page to Regional Air Division Directors, "Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)," October 14, 2011.

### ► Subsection 110(a)(2)(J): Consultation with Government Officials

#### CAA Citation:

"Each such plan shall...meet the applicable requirements of section 121 (relating to consultation),..."

#### Applicable NH Laws and Regulations:

- RSA 125:81 (recodified as [RSA 125-C:6](#)) provides as follows: "In addition to the other powers and duties granted herein, the agency shall have and may exercise the following powers and duties:... V. To advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air pollution; VI. To encourage local units to promote cooperation by the people, political subdivisions, industries, and others in preventing and controlling air pollution in the state;... XIII. The agency shall have the authority to coordinate and regulate the air pollution control programs of civil subdivisions of the state and to enter agreements with said subdivisions to plan or implement programs for the control and abatement of air pollution."
- [Env-A 600: Statewide Permit System](#)
  - Env-A 621: Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate specifies the public notice and hearing procedures that apply to all applications for the issuance of, amendment to, or denial of temporary permits and permits to operate.
  - Env-A 622: Permit Notice and Hearing Procedures: Title V Operating Permits specifies the public notice and hearing procedures that apply to all applications for the issuance, significant modification to or renewal of Title V operating permits files with the department and all requests for Title V operating permit re-openings.
- [Env-A 1500: Conformity](#) provides for consultation with local, regional, and federal agencies to ensure that transportation plans, programs, projects, and federal actions are consistent with the SIP. This rule implements section 176 of the CAA and [40 CFR 93](#), relative to conformity determinations, including provisions for consultation as required by section 176(c)(4) and 40 CFR 93.105.

### ► Subsection 110(a)(2)(J): Public Notification

#### CAA Citation:

"Each such plan shall...meet the applicable requirements of...section 127 (relating to public notification),..."

#### Applicable NH Laws and Regulations:

- RSA 125:81 (recodified as [RSA 125-C:6](#)) provides as follows: "In addition to the other powers and duties granted herein, the agency shall have and may exercise the following powers and duties:... IV. To collect and disseminate the results of studies relating to air pollution; V. To advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air pollution; VI. To encourage local units to promote cooperation by the

people, political subdivisions, industries, and others in preventing and controlling air pollution in the state; . . .”

**Additional Information:**

SO<sub>2</sub> is a chemical precursor, and one of many known contributors, to fine particle (PM<sub>2.5</sub>) pollution. On days when ambient PM<sub>2.5</sub> (or ozone) concentrations are predicted to be high, NHDES exercises the authority granted under RSA 125:81 (recodified as [RSA 125-C:6](#)) to issue public alerts. NHDES makes press releases and posts website notices advising people on how to help prevent air pollution and minimize the worst health effects of poor air quality. NHDES is one of the state partners in EPA’s AIRNOW and Enviroflash Air Quality Alert programs. (See [www.airnow.gov](http://www.airnow.gov).)

**► Subsection 110(a)(2)(J): PSD**

**CAA Citation:**

"Each such plan shall...meet the applicable requirements of...part C (relating to prevention of significant deterioration of air quality and visibility protection);..."

**Applicable NH Laws and Regulations:**

- RSA 125:81, XIV (recodified as [RSA 125-C:6](#), XIV) authorizes the agency to establish and operate a statewide system under which permits shall be required for the construction and operation of new and modified stationary sources.
- [Env-A 619: Prevention of Significant Deterioration](#) addresses PSD and is essential to meeting the requirements of [40 CFR 51.166](#), [40 CFR 52.21](#), and [RSA 125-C](#).

**► Subsection 110(a)(2)(K): Air Quality Modeling/Data**

**CAA Citation:**

"Each such plan shall...“provide for – (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.”

**Applicable NH Laws and Regulations:**

- RSA 125:81 (recodified as [RSA 125-C:6](#)) authorizes the department to exercise general supervision of the administration and enforcement of the statute and all rules adopted and orders promulgated under it; to develop a comprehensive program and provide services for the

study, prevention, and abatement of air pollution; to conduct and encourage studies relating to air quality; to collect and disseminate the results of studies relating to air quality; to advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air quality; and, among other authorities, to exercise all incidental powers necessary to carry out the purposes of the statute.

- [Env-A 600: Statewide Permit System](#)

- Env-A 613.02: Denial of Permit Issuance authorizes NHDES to deny the issuance of a construction permit if modeling shows that a major source proposing to construct or make modifications in a nonattainment area will cause or contribute to a violation of the NAAQS for a pollutant for which that area is in attainment.
- Env-A 619.03: PSD Program Requirements incorporates by reference numerous paragraphs of [40 CFR 52.21](#), including (k)(1), (l), and (m), which require modeling by major sources prior to construction or major modifications.

**Additional Information:**

SO<sub>2</sub> is a chemical precursor, and one of many known contributors, to fine particle (PM<sub>2.5</sub>) pollution. In exercising the authority granted in RSA 125:81 (recodified as [RSA 125-C:6](#)), NHDES regularly performs trend analysis for ozone, NO<sub>2</sub>, and PM<sub>2.5</sub>, as well as predictive air quality modeling for ozone and PM<sub>2.5</sub>. New Hampshire is a member of the Ozone Transport Commission and the Mid-Atlantic/Northeast Visibility Union (MANE-VU) and participates in the air quality modeling efforts conducted by these organizations.

**► Subsection 110(a)(2)(L): Permitting Fees**

**CAA Citation:**

"Each such plan shall...“require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover – (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.”

**Applicable NH Laws and Regulations:**

- [Env-A 700: Permit Fee System](#) establishes a fee system requiring the payment of fees to cover the reasonable direct and indirect costs of: reviewing and acting upon applications for the issuance of, amendment to, modification to, renewal of, or any combination of the foregoing actions to a temporary permit, state permit to operate, or Title V operating permit; implementing and enforcing the terms and conditions of any temporary permit, state permit to operate, or Title V operating permit; administering the state permit program; and developing, implementing and administering the Title V operating permit program. In particular, Env-A 705 establishes the emission fee program for Title V and non-Title V sources.

**Additional Information:**

The fee requirement of this subsection has been superseded by the EPA-approved fee program established under title V. New Hampshire's title V program received full approval by EPA, effective on November 23, 2001. Documentation for New Hampshire's program included a demonstration that the state will collect fees from title V sources above the presumptive minimum in accordance with [40 CFR 70.9\(b\)\(2\)\(i\)](#).

► **Subsection 110(a)(2)(M): Consultation/Participation by Affected Local Entities**

**CAA Citation:**

"Each such plan shall...“provide for consultation and participation by local political subdivisions affected by the plan.”

**Applicable NH Laws and Regulations:**

- RSA 125:81 (recodified as [RSA 125-C:6](#)) provides as follows: “In addition to the other powers and duties granted herein, the agency shall have and may exercise the following powers and duties:... V. To advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air pollution; VI. To encourage local units to promote cooperation by the people, political subdivisions, industries, and others in preventing and controlling air pollution in the state;... XIII. The agency shall have the authority to coordinate and regulate the air pollution control programs of civil subdivisions of the state and to enter agreements with said subdivisions to plan or implement programs for the control and abatement of air pollution;...”
- [Env-A 204: Public Hearings on the State Implementation Plan](#) sets forth the procedure for SIP hearings.



Attachment 1

New Hampshire Statutes  
Chapter 125-C: Air Pollution Control

- [Section 125-C:1 Declaration of Policy and Purpose.](#)
- [Section 125-C:2 Definitions.](#)
- [Section 125-C:4 Rulemaking Authority; Subpoena Power.](#)
- [Section 125-C:6 Powers and Duties of the Commissioner.](#)
- [Section 125-C:8 Administration of Chapter; Delegation of Duties.](#)
- [Section 125-C:9 Authority of the Commissioner in Cases of Emergency.](#)
- [Section 125-C:10 Devices Contributing to Air Pollution.](#)
- [Section 125-C:10-a Municipal Waste Combustion Units.](#)
- [Section 125-C:11 Permit Required.](#)
- [Section 125-C:12 Administrative Requirements.](#)
- [Section 125-C:13 Criteria for Denial; Suspension or Revocation; Modification.](#)
- [Section 125-C:14 Rehearings and Appeals.](#)
- [Section 125-C:15 Enforcement.](#)
- [Section 125-C:18 Existing Remedies Unimpaired.](#)
- [Section 125-C:19 Protection of Powers.](#)
- [Section 125-C:21 Severability.](#)

**TITLE X**  
**PUBLIC HEALTH**  
**CHAPTER 125-C**  
**AIR POLLUTION CONTROL**

**Section 125-C:1**

**125-C:1 Declaration of Policy and Purpose.** – It is hereby declared to be the public policy of the state of New Hampshire and the purpose of this chapter to achieve and maintain a reasonable degree of purity of the air resources of the state so as to promote the public health, welfare, and safety, prevent injury or detriment to human, plant, and animal life, physical property and other resources, foster the comfort and convenience of the people, promote the economic and social development of this state and to facilitate the enjoyment of the natural attractions of the state.

**Source.** 1979, 359:2, eff. July 1, 1979.

**Section 125-C:2**

**125-C:2 Definitions.** – Terms used in this chapter shall be construed as follows unless a different meaning is clearly apparent from the language or context:

I. [Omitted.]

I-a. "Affected source," any stationary source, the construction, installation, operation, and modification of which is subject to Title V, Clean Air Act, 42 U.S.C. 7401 et seq., as amended.

II. "Air contaminant," soot, cinders, ashes, any dust, fume, gas, mist (other than water), odor, toxic or radioactive material, particulate matter, or any combination thereof.

III. "Air pollution," the presence in the outdoor atmosphere of one or more contaminants or any combination thereof in sufficient quantities and of such characteristics and duration as are or are likely to be injurious to public welfare, to the health of human, plant, or animal life, or cause damage to property or create a disagreeable or unnatural odor or obscure visibility or which unreasonably interfere with the enjoyment of life and property.

III-a. "Biomass" means organic matter used as a fuel, not including wood derived from construction and demolition debris, as defined in RSA 149-M:4, IV-a; wood which has been chemically treated; or agricultural crops or aquatic plants or byproducts from such crops or plants, which have been used to rehabilitate a contaminated or brownfields site through a process known as "phytoremediation."

IV. "Clean Air Act," the Clean Air Act, 42 U.S.C. 7401, and amendments thereto amending 42 U.S.C. 1857 et seq.

V. [Omitted.]

V-a. "Commissioner," the commissioner of the department of environmental services.

V-b. "Department," the department of environmental services.

V-c. "Consumer products," any substance, product (including paints, coatings, and solvents), or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of air contaminants.

VI. "Device which contributes to air pollution," any burner, furnace, machine, equipment or article which, in the opinion of the commissioner, contributes or may contribute to the pollution of the air.

VI-a. "Dioxin" means a group of chemical compounds that share certain similar chemical structures and mode-of-action biological characteristics, including a total of 17 dioxin-like compounds that are members of 2 closely related families: chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs).

VII. [Repealed.]

VII-a. "Eligible biomass fuel" means fuel sources including biomass or neat biodiesel, as defined in RSA 362-A:1-a, I-b, and other neat liquid fuels that are derived from biomass.

VIII. "Emission," a release into the outdoor atmosphere of air contaminants.

VIII-a. "Hearing," the opportunity for the submission of either written or oral comments, or the submission of both written and oral comments.

VIII-b. "Major deviation from requirement" means the violator deviated from a requirement of a statute or rule to such an extent that there is substantial non-compliance.

VIII-c. "Major potential for harm" means a substantial likelihood of causing unhealthful air quality.

IX. [Repealed.]

IX-a. "Non-Title V Source," any stationary source other than an affected source which, in the opinion of the commissioner, contributes or may contribute to the pollution of the air.

IX-b. "Minor deviation from requirement" means the violator deviated partially from a requirement of a statute or rule such that most of the requirement was met.

IX-c. "Minor potential for harm" means a small likelihood of causing unhealthful air quality.

IX-d. "Moderate deviation from requirement" means the violator significantly deviated from a requirement of a statute or rule but some requirements were implemented as intended, such that approximately half the requirements were met.

IX-e. "Moderate potential for harm" means a moderate likelihood of causing unhealthful air quality.

IX-f. "Particulate matter" means any material, including lead, but not uncombined water, which is or has been suspended in air or other gases and which exists in a finely divided form as a liquid or solid at standard conditions.

X. "Person," any individual, partnership, firm or co-partnership, association, company, trust, corporation, department, bureau, agency, private or municipal corporation, or any political subdivision of the state, the United States or political subdivisions or agencies thereof, or any other entity recognized by law as subject to rights and duties.

X-a. "Repeat violation" means a subsequent violation of a statute or rule at a facility or by a person for which a letter of deficiency, administrative order, or administrative fine has previously been issued by the department.

XI. "Stationary source," any building, structure, facility, or installation which emits or which may emit any regulated air pollutant.

**Source.** 1979, 359:2. 1981, 332:1, 2. 1986, 202:6, I(h). 1993, 329:2, 3. 1996, 228:18, 105, 113, IV; 247:1, 2, 10; 278:10. 2001, 293:4, eff. July 17, 2001. 2005, 173:1, 2, eff. June 29, 2005. 2008, 113:1, 2, eff. Aug. 2, 2008. 2010, 183:1, 5, eff. June 21, 2010.

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## **Section 125-C:4**

### **125-C:4 Rulemaking Authority; Subpoena Power. –**

I. The commissioner shall adopt rules under RSA 541-A, relative to:

(a) The prevention, control, abatement, and limitation of air pollution, including, but not limited to, open air source pollution, mobile source pollution, and stationary source pollution.

(b) Primary and secondary ambient air quality standards.

(c) Procedures to meet air pollution emergencies, as authorized by RSA 125-C:9.

(d) The establishment and operation of a statewide permit system, as authorized by RSA 125-C:6, XIV, RSA 125-C:11, I and RSA 125-C:11, I-a.

(e) Devices, in addition to those devices defined under RSA 125-C:2, subject to the permit

requirements of RSA 125-C:11, as authorized by RSA 125-C:11, II.

(f) The exemption of certain devices and non-Title V sources from the permit requirements of RSA 125-C:11, I and the conformance of exempted devices to established standards, as authorized by RSA 125-C:11, I.

(g) The forms and information required on applications for temporary and permanent permits required under RSA 125-C:11, as authorized by RSA 125-C:12, I.

(h) Notification of and public hearing on permit applications, including exemptions from those requirements, as authorized by RSA 125-C:12, II.

(i) Fees for permit application and review, as authorized by RSA 125-C:12, IV-d.

(j) Procedures for permit application review, as authorized by RSA 125-C:11, IV, and criteria for permit denial, suspension or revocation, as authorized by RSA 125-C:13.

(k) Procedures for air testing and monitoring and recordkeeping, as authorized by RSA 125-C:6, XI.

(l) Procedures for receiving violation complaints and for rules enforcement, as authorized by RSA 125-C:15, I.

(m) Procedures for granting variances, as authorized by RSA 125-C:16.

(n) The manufacture, use, or sale of consumer products for purposes of implementing RSA 485:16-c.

(o) Applicability thresholds for emissions of particulate matter, mercury, and dioxin as provided in RSA 125-C:10-b, VII(f).

(p) The duration of time during which no additional best available control technology determination is required as provided in RSA 125-C:10-b, IV and VI.

(q) Procedures for establishing standards for and certification of any material, that is not an exempt fuel, to be combusted in a device at an affected source subject to RSA 125-C:10-b.

(r) Standards and testing requirements for biomass and eligible biomass fuel as authorized by RSA 125-C:6, XIV-a.

I-a. In adopting rules under paragraph I, the department may incorporate by reference standards issued by the California air resources board relative to certification and testing of vapor recovery equipment.

I-b. In adopting rules under subparagraph I(n), the department may incorporate by reference other state test methods and procedures that are referenced in the model rules of the Ozone Transport Commission (OTC) concerning consumer products, as defined in RSA 125-C:2, V-c.

II. The commissioner is authorized to issue subpoenas requiring the attendance of such witnesses and the production of such evidence and to administer such oaths and to take such testimony as he may deem necessary.

**Source.** 1979, 359:2. 1986, 202:8. 1996, 228:19, 104; 278:2, 3. 2001, 293:5. 2003, 137:3. 2004, 175:2, eff. May 27, 2004. 2005, 173:3, eff. June 29, 2005. 2008, 113:3, eff. Aug. 2, 2008. 2010, 183:6, eff. June 21, 2010.

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## **Section 125-C:6**

**125-C:6 Powers and Duties of the Commissioner.** – In addition to the other powers and duties granted herein, the commissioner shall have and may exercise the following powers and duties:

I. Exercising general supervision of the administration and enforcement of this chapter and all rules adopted and orders promulgated under it;

II. Developing a comprehensive program and provide services for the study, prevention, and abatement of air pollution;

III. Conducting and encouraging studies relating to air quality;

IV. Collecting and disseminating the results of studies relating to air quality;

V. Advising, consulting, and cooperating with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air quality;

VI. Encouraging local units to promote cooperation by the people, political subdivisions, industries, and others in preventing and controlling air pollution in the state;

VI-a. Encouraging the recycling of waste oil by allowing qualified marketers to sell, and qualified facilities to burn, a mixture that consists of at least 90 percent virgin no. 6 oil and the remainder complying with the used fuel oil specifications in 40 CFR, section 279.11, table 1;

VII. Entering at all reasonable times in or upon any private or public property, except private residences, for the purpose of inspecting or investigating any condition which is believed to be either an air pollution source or in violation of any of the rules or orders promulgated hereunder. Any information, other than emission data, relating to secret processes or methods of manufacture or production obtained in the course of such inspection or investigation shall not be disclosed by the commissioner without permission of the person whose source is inspected or investigated;

VIII. Accepting, receiving, and administering grants or other funds or gifts for the purpose of carrying out any of the functions of this chapter, including such monies given under any federal law to the state for air quality control activities, surveys, or programs;

IX. Consulting the air resources council established by RSA 21-O:11 on the policies and plans for the control and prevention of air pollution;

X. Exercising all incidental powers necessary to carry out the purposes of this chapter;

XI. Conducting emission tests and requiring owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the commissioner on the nature and amounts of emissions from such stationary sources. The commissioner shall have the authority to make such data available to the public and as correlated with any applicable emission standards;

XII. Carrying out a program of inspection and testing of all modes of transportation, to enforce compliance with applicable emission standards when necessary and practicable and to control or limit the operation of motor vehicular and other modes of transportation when in the opinion of the commissioner such modes of transportation are producing or pose an imminent danger of producing levels of air pollutants that will result in a violation of an ambient air quality standard, or that will result in a significant deterioration, as defined in applicable federal regulations, of existing air quality in an area classified as a "clean air" area by state or federal regulations;

XIII. Coordinating and regulating the air pollution control programs of political subdivisions of the state and entering agreements with said subdivisions to plan or implement programs for the control and abatement of air pollution;

XIV. Establishing and operating a statewide system under which permits shall be required for the construction, installation, operation, or modification of air pollution devices and sources, which system shall be established pursuant to RSA 125-C:11 and the sections which follow. The authority vested in the commissioner by this section shall include the power to delay or prevent any construction, modification, or operation of said air pollution sources and modifications which, in the opinion of the commissioner, would cause the ambient air pollution level in the locality of such construction, modification, or operation to exceed limits for ambient concentrations established by the New Hampshire state implementation plan adopted pursuant to the Clean Air Act as amended, or which construction, modification, or operation would, in the opinion of the commissioner, violate any provision of any land use plan established by the New Hampshire state implementation plan;

XIV-a. Establishing fuel quality standards and testing requirements for biomass other than round wood and wood chips derived from round wood or waste wood such as limbs, branches,

brush, slash, bark, stumps, sawdust, saw mill trimmings, clean pallets, and untreated wood scraps from furniture and other manufacture and eligible biomass fuel related to the combustion of such materials at stationary sources. The commissioner may establish such standards as necessary to maintain statewide compliance with Clean Air Act standards and RSA 125-I.

XV. Implementing a program of prevention of significant deterioration of ambient air quality by establishing air quality increments limiting the maximum allowable increases in the amounts of air pollutants provided such increments are not less stringent than those specified in the Clean Air Act and amendments thereto, and in regulations promulgated thereunder;

XVI. Establishing an air quality monitoring equipment replacement program to provide for sufficient annual replacement to meet federal Environmental Protection Agency guidelines and to assure the reliability and accuracy of the network equipment.

XVII. Implementing a program to control the emissions of air contaminants from consumer products for purposes of RSA 485:16-c, by establishing limits on the manufacture, use, or sale of such products, provided that such limits are not less stringent than those established under the Clean Air Act and amendments thereto, and in regulations promulgated under the Clean Air Act.

**Source.** 1979, 359:2. 1981, 332:3. 1986, 202:6, I(h), 8, 10. 1988, 277:1. 1995, 192:1. 1996, 228:104. 2001, 293:6, eff. July 17, 2001. 2008, 113:4, eff. Aug. 2, 2008. 2010, 183:8, eff. June 21, 2010.

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### **Section 125-C:8**

**125-C:8 Administration of Chapter; Delegation of Duties.** – The commissioner shall be responsible for the implementation of this chapter and any rule adopted hereunder and may delegate to a subordinate or subordinates any and all duties vested in him, except rulemaking authority.

**Source.** 1979, 359:2. 1986, 202:11. 1996, 228:104, eff. July 1, 1996.

### **Section 125-C:9**

**125-C:9 Authority of the Commissioner in Cases of Emergency.** – Whenever the commissioner finds that an air pollution emergency exists requiring immediate action to protect the public health, welfare, or safety, he may with consent of the governor and council issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith. The commissioner shall rescind or abate such order as soon as the emergency ceases to exist.

**Source.** 1979, 359:2. 1996, 228:104, eff. July 1, 1996.

### **Section 125-C:10**

#### **125-C:10 Devices Contributing to Air Pollution.** –

I. No person shall install, construct, operate, or modify any device or non-Title V source which contributes to air pollution except as prescribed by this chapter.

II. No person shall construct, operate or modify an affected source which contributes to air pollution except as prescribed by this chapter.

**Source.** 1979, 359:2. 1993, 329:4. 1996, 278:4, eff. Aug. 9, 1996.

### **Section 125-C:10-a**

**125-C:10-a Municipal Waste Combustion Units.** – Any municipal waste combustor, as defined in RSA 125-M:2, XI, with a design capacity of at least 35 tons per day but no more than 250 tons per day of municipal solid waste, as defined in RSA 125-M:2, X, shall be limited to the following levels of emissions, unless otherwise provided for by a more stringent federal regulation, or by other state statute:

I. Particulate matter: 27 milligrams/dry standard cubic meter, corrected to 7 percent oxygen, 3-run average (run duration specified in test method).

II. Opacity: 10 percent (6-minute average), 30 6-minute averages.

III. Cadmium: 0.040 milligrams/dry standard cubic meter, corrected to 7 percent oxygen, 3-run average (run duration specified in test method).

IV. Lead: 0.44 milligrams/dry standard cubic meter, corrected to 7 percent oxygen, 3-run average (run duration specified in test method).

V. Mercury: 0.028 milligrams/dry standard cubic meter, corrected to 7 percent oxygen, or 85 percent control efficiency, 3-run average (run duration specified in test method).

VI. Sulfur dioxide: 29 parts per million by volume, or 25 percent of the potential sulfur dioxide emission concentration, corrected to 7 percent oxygen (dry basis), monthly block geometric average concentration or percent reduction.

VII. Hydrogen chloride: 29 parts per million by volume, or 5 percent of the potential hydrogen chloride emission concentration, corrected to 7 percent oxygen (dry basis), 3-run average (minimum run duration is 1 hour).

VIII. Dioxins/furans: 60 nanograms/dry standard cubic meter (total mass), corrected to 7 percent oxygen, where an electrostatic precipitator-based emission control system is employed; or 30 nanograms/dry standard cubic meter (total mass) corrected to 7 percent oxygen, where an electrostatic precipitator-based emission control system is not employed, 3-run average (minimum run duration is 4 hours).

**Source.** 2005, 72:1, eff. Jan. 1, 2006.

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### **Section 125-C:11**

#### **125-C:11 Permit Required. –**

I. The construction, installation, operation, or modification of any device or non-Title V source as defined under RSA 125-C:2, and as further defined by rules adopted by the commissioner shall be prohibited unless the source possesses a temporary permit or operating permit whether a permit-by-notification, general permit, or an individual operating permit issued by the commissioner. The commissioner may by rule exempt certain devices or non-Title V sources from the requirements of this section.

I-a. The construction, installation, operation, or modification of an affected source shall be prohibited unless the affected source possesses and complies with a temporary permit, general permit, or individual operating permit issued by the commissioner in accordance with the requirements of the Clean Air Act. The term of the general permit or permit to operate shall not exceed 5 years.

II. A temporary permit, which may contain conditions, shall be required prior to commencement of construction or installation of any new or modified device or non-Title V source except for those devices or non-Title V sources which are authorized to construct and operate pursuant to a permit-by-notification or a general permit. A temporary permit shall be in effect until it expires, an operating permit is issued, or until sooner revoked by the commissioner. Such permit shall contain the emission limits the device or non-Title V source is required to



meet, and shall be issued by the commissioner upon a finding that the device or non-Title V source will meet such limits and will not result in a violation of any air quality standard or regulation in force under this chapter.

III. An individual operating permit, which may contain conditions, shall be issued with respect to a device or non-Title V source for which a temporary permit is in effect, upon a finding by the commissioner, following operational testing, where required, that the device or non-Title V source meets the applicable emission limits and that its operation will not result in a violation of any air quality standard or regulation in force under this chapter.

III-a. [Repealed.]

III-b. A general permit, which may contain certain conditions, may be issued with respect to a Title V source category if the commissioner finds that there is more than one stationary source, area source, or device in the same category and the stationary sources, area sources, or devices in that category are all subject to the same regulatory requirements.

III-c. The commissioner may adopt rules providing for a permit-by-notification with respect to a source category, provided that the commissioner finds that there is more than one device or non-Title V source in the source category, and that the devices or non-Title V sources in that category are all subject to the same regulatory requirements.

IV. A temporary permit, which may contain conditions, shall be required prior to commencement of construction or installation of any new or modified affected source, except for those affected sources which are authorized to be constructed pursuant to a general permit. The applicant shall be required to conduct preconstruction or premodification review procedures prior to commencement of construction of any new major stationary source, device, or modification to any existing major stationary source or device. Such procedures shall be sufficient to allow the commissioner to make determinations that the proposed construction or modification will not cause or contribute to a failure to attain or maintain any ambient air quality standard, significant deterioration of air quality, or a violation of any applicable emission limitation or standard of performance. Such preconstruction and premodification review requirements shall be no less stringent than, and shall require that no permit shall be issued for a source unless such source meets all the requirements for review and for obtaining a permit prescribed in the Clean Air Act.

V. The applicant for a permit to operate shall be required to conduct preconstruction or premodification review procedures prior to commencement of construction of any affected source. Such procedures shall be sufficient to allow the commissioner to make determinations that the proposed construction or modification will not cause or contribute to a failure to attain or maintain any ambient air quality standard, significant deterioration of air quality, or a violation of any applicable emission limitation or standard of performance. The applicant shall submit the required information to the commissioner prior to the commencement of construction or modification. Such preconstruction review and premodification review requirements shall be no less stringent than those prescribed in the Clean Air Act, 42 U.S.C. section 7401 et seq., as amended.

**Source.** 1979, 359:2. 1981, 332:4. 1986, 202:6, I(h). 1993, 329:5-8. 1995, 68:1, 4. 1996, 228:104, eff. July 1, 1996; 278:11, 12, eff. Aug. 9, 1996. 2010, 183:2, eff. June 21, 2010.

## **Section 125-C:12**

### **125-C:12 Administrative Requirements. –**

I. Applications for permits shall be upon such forms, and shall include such information, as the commissioner requires under rules adopted pursuant to RSA 541-A in order to determine the nature of the air pollution potential for such device or non-Title V source.

II. The commissioner shall act upon a permit application within a reasonable period of time.

Prior to such action, the commissioner shall provide notice of the application by publication in at least one newspaper of general circulation. The commissioner shall also provide an opportunity for a hearing to interested persons. The requirement of public notice and hearing shall not apply to such devices or sources that will have, in the opinion of the commissioner, an insignificant effect on air quality. The commissioner may adopt rules relative to the requirements of public notice and hearing for such devices or sources.

III. Any person aggrieved by a decision of the commissioner to grant in whole or in part, with or without conditions, or to deny a permit who wishes to appeal the decision shall proceed in accordance with RSA 21-O:14.

IV. As a condition of any permit or authorization required or any requested applicability determination, the commissioner may require payment of a fee to cover the reasonable costs of reviewing and acting upon the application for a permit.

IV-a. The applicant shall pay any cost or expense associated with public notices or notifications in the permit process.

IV-b. As a condition of any permit or authorization required, the commissioner may require payment of an annual emissions fee sufficient to cover the costs of implementing or enforcing the permit program authorized by this chapter including:

- (a) The costs of reviewing and acting upon any permit renewal;
- (b) Emissions and ambient monitoring, for those costs incurred under the permitting program;
- (c) Preparing generally applicable rules or guidance;
- (d) Modeling, monitoring, analyses, and compliance demonstrations;
- (e) Preparing inventories and tracking emissions; and
- (f) Inspections and enforcement.

IV-c. In lieu of the annual emissions fee specified in paragraph IV-b, as a condition of any permit or authorization required, the commissioner may require payment of a one-time fee sufficient to cover the costs of implementing or enforcing the permit program authorized by this chapter including the provisions specified in paragraph IV-b.

IV-d. The commissioner shall adopt rules relative to a fee schedule for applicants and the collection of fees under the schedule. All fees and monetary grants, gifts, donations, or interest generated by these funds shall be deposited with the state treasurer in a special nonlapsing fund to be known as the air resources fund and shall be continually appropriated to the department for the administration of this chapter.

V. Fees required to be collected from affected sources by the Clean Air Act as authorized under this section shall be deposited in the air resources fund, shall be accounted for separately, and shall be used by the commissioner for the establishment and operation of a statewide system of permitting for the construction, operation, or modification of any new or existing affected source.

**Source.** 1979, 359:2. 1981, 332:5. 1986, 202:6, I(h). 1991, 289:1. 1993, 329:9. 1995, 68:2. 1996, 228:104, 107, eff. July 1, 1996; 278:13, eff. Aug. 9, 1996. 2010, 183:3, eff. June 21, 2010. 2012, 246:6, eff. June 18, 2012.

## **Section 125-C:13**

### **125-C:13 Criteria for Denial; Suspension or Revocation; Modification. –**

I. The commissioner shall deny an application for any permit or authorization if, on the basis of evidence available to the commissioner, the commissioner determines:

- (a) That the device or non-Title V source for which the permit or authorization is sought will result in a violation of any standard or rule in force under this chapter; or
- (b) That the device or non-Title V source will contribute disproportionately to pollution of

the air in comparison with other similar sources able to perform the same function that are currently available; or

(c) That the device or non-Title V source is located in a "clean air" area designated by state or federal rules or regulations and will or is reasonably likely to cause significant deterioration of the existing air quality in a part of the area.

II. The commissioner may suspend or revoke any permit or authorization issued hereunder if, following a hearing, the commissioner determines:

(a) That the permit holder or registrant has committed a violation of this chapter or any rule, order, or permit conditions in force and applicable to it; or

(b) That emissions from the device or non-Title V source to which the permit applies, alone or in conjunction with other sources of the same pollutants, presents an immediate danger to the public health.

III. The commissioner may order modification of any source of air pollution holding a valid permit issued under this chapter in the event that the commissioner determines, following a hearing:

(a) That the device or non-Title V source to which the permit applies fails to meet existing emission limits established by state or federal rule or regulation;

(b) That the device or non-Title V source is resulting or is reasonably likely to result in a violation of an air quality standard in force.

IV. The commissioner may terminate, modify, revoke, or reissue for cause any permit or authorization issued to an affected source prior to expiration of such permit consistent with the requirements of the Clean Air Act.

**Source.** 1979, 359:2. 1993, 329:10, 11. 1995, 68:3. 1996, 228:104, eff. July 1, 1996; 278:14, eff. Aug. 9, 1996. 2010, 183:4, eff. June 21, 2010.

## **Section 125-C:14**

**125-C:14 Rehearings and Appeals.** – Administrative appeals from decisions of the commissioner made under the provisions of this chapter shall be heard by the air resources council under RSA 21-O:11, IV.

**Source.** 1979, 359:2. 1981, 332:6, 7. 1986, 202:12. 1996, 228:104, eff. July 1, 1996.

## **Section 125-C:15**

### **125-C:15 Enforcement.** –

I. Whenever the commissioner or the commissioner's authorized representative finds that any device, non-Title V source, affected source of air pollution, or any other source of air pollution has resulted in a violation of any of the provisions of this chapter or any rules in force hereunder, or any condition in a permit issued under this chapter, the commissioner shall issue a notice of violation and, where appropriate, an order of abatement establishing a compliance schedule with which the device, non-Title V source, affected source, or any other source shall comply. Any order of abatement shall become final and enforceable by the commissioner within 30 days of its issuance unless an appeal is filed with the air resources council before the expiration of said 30-day period. The council shall hold a hearing on any such appeal promptly, and shall thereafter issue a decision upholding, modifying or abrogating the commissioner's order of abatement or any part thereof. The council's decision shall become final 10 days after it is issued. Upon a finding by the commissioner that there is an imminent and substantial endangerment to the public health or welfare or the environment, the commissioner shall issue an order of abatement requiring immediate compliance and said order shall be final and enforceable upon issuance, but may be appealed to the council within 30 days of its issuance, and the council may, after hearing,

uphold, modify, or abrogate said order.

I-a. Whenever the commissioner or his authorized representative finds that a gasoline dispensing facility subject to Stage II vapor recovery system requirements has resulted in a violation of any provisions of this chapter or the rules in force hereunder, the commissioner or authorized representative shall issue a stop use order and compliance schedule with which the gasoline dispensing facility shall comply. Any stop use order shall become final and enforceable upon issuance, but may be appealed to the council within 10 days of its issuance and the council, after hearing, may uphold, modify, or abrogate such order.

I-b. The commissioner of the department of environmental services, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this chapter, any rule adopted pursuant to this chapter, or any permit, compliance schedule, stop use order, or order of abatement, issued pursuant to this chapter; or upon any person who makes or certifies a material false statement relative to any document or information which is required to be submitted to the department pursuant to this chapter or any rule adopted pursuant to this chapter. Rehearings and appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this paragraph shall not preclude the imposition of further penalties under this chapter. The proceeds of administrative fines imposed pursuant to this paragraph shall be deposited in the general fund.

(a) Notice and hearing prior to the imposition of an administrative fine shall be in accordance with RSA 541-A and procedural rules adopted by the commissioner pursuant to RSA 541-A:16.

(b) The commissioner shall determine fines based on the following:

(1) For a minor deviation from a requirement causing minor potential for harm, the fine shall be not less than \$100 and not more than \$1,000.

(2) For a minor deviation from a requirement causing moderate potential for harm, the fine shall be not less than \$601 and not more than \$1,250.

(3) For a minor deviation from a requirement causing major potential for harm, the fine shall be not less than \$851 and not more than \$1,500.

(4) For a moderate deviation from a requirement causing minor potential for harm, the fine shall be not less than \$601 and not more than \$1,250.

(5) For a moderate deviation from a requirement causing moderate potential for harm, the fine shall be not less than \$851 and not more than \$1,500.

(6) For a moderate deviation from a requirement causing major potential for harm, the fine shall be not less than \$1,251 and not more than \$1,750.

(7) For a major deviation from a requirement causing minor potential for harm, the fine shall be not less than \$851 and not more than \$1,500.

(8) For a major deviation from a requirement causing moderate potential for harm, the fine shall be not less than \$1,251 and not more than \$1,750.

(9) For a major deviation from a requirement causing major potential for harm, the fine shall be not less than \$1,501 and not more than \$2,000.

(c) The commissioner may assess an additional fine for repeat violations.

II. Any violation of the provisions of this chapter, or of any rule adopted or order issued under it, or of any condition in a permit issued under it, shall be subject to enforcement by injunction, including mandatory injunction, issued by the superior court upon application of the attorney general. Any such violation shall also be subject to a civil forfeiture to the state of not more than \$25,000 for each violation, and for each day of a continuing violation.

III. Any person who violates any of the provisions of this chapter, or any rule adopted or order issued under this chapter, or any condition of a permit issued under this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

IV. Notwithstanding RSA 651:2, any person may, in addition to any sentence of

imprisonment, probation, or conditional discharge, be fined not more than \$25,000 if found guilty of any violation pursuant to RSA 125-C:15, III. Each day of violation shall constitute a separate offense.

**Source.** 1979, 359:2. 1981, 332:8. 1993, 329:12. 1996, 228:104; 247:11; 278:15. 1998, 146:1, 2, eff. June 8, 1998.

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### **Section 125-C:18**

**125-C:18 Existing Remedies Unimpaired.** – No existing civil or criminal remedy for any wrongful action which is a violation of any code or rule adopted hereunder shall be excluded or impaired by this chapter.

**Source.** 1979, 359:2, eff. July 1, 1979.

### **Section 125-C:19**

**125-C:19 Protection of Powers.** – The powers and functions vested in the commissioner under the provisions of this chapter shall not be construed to affect in any manner the powers, duties and functions vested in the department of health and human services under any other provision of law.

**Source.** 1979, 359:2. 1983, 291:1, I. 1986, 202:6, I(h). 1995, 310:181. 1996, 228:104, eff. July 1, 1996.

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### **Section 125-C:21**

**125-C:21 Severability.** – If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application; and, to this end, the provisions of this chapter are severable.

**Source.** 1981, 332:9, eff. Aug. 16, 1981.

Attachment 2

## Comparison of New and Old Statutes: RSA 125-C and RSA 125

RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p><b>125-C:1 Declaration of Policy and Purpose.</b> – It is hereby declared to be the public policy of the state of New Hampshire and the purpose of this chapter to achieve and maintain a reasonable degree of purity of the air resources of the state so as to promote the public health, welfare, and safety, prevent injury or detriment to human, plant, and animal life, physical property and other resources, foster the comfort and convenience of the people, promote the economic and social development of this state and to facilitate the enjoyment of the natural attractions of the state.</p>	<p><b>125:78 Declaration of Policy and Purpose.</b> It is hereby declared to be the public policy of the state of New Hampshire and the purpose of this subdivision to achieve and maintain a reasonable degree of purity of the air resources of the state so as to promote the public health, welfare, and safety, prevent injury or detriment to human, plant, and animal life, physical property and other resources, foster the comfort and convenience of the people, promote the economic and social development of this state and to facilitate the enjoyment of the natural attractions of this state.</p>	<p>Identical wording.</p>
<p><b>125-C:2 Definitions.</b> – Terms used in this chapter shall be construed as follows unless a different meaning is clearly apparent from the language or context:</p> <p>I. [Omitted.]</p> <p>II. "Air contaminant," soot, cinders, ashes, any dust, fume, gas, mist (other than water), odor, toxic or radioactive material, particulate matter, or any combination thereof.</p> <p>III. "Air pollution," the presence in the outdoor atmosphere of one or more contaminants or any combination thereof in sufficient quantities and of such characteristics and duration as are or are likely to be injurious to public welfare, to the health of human, plant, or animal life, or cause damage to property or create a disagreeable or unnatural odor or obscure visibility or which unreasonably interfere with the enjoyment of life and property.</p> <p>VIII. "Emission," a release into the outdoor atmosphere of air contaminants.</p>	<p><b>125:79 Definitions.</b></p> <p>I. "Air pollution" means the presence in the outdoor atmosphere of one or more contaminants or any combination thereof in sufficient quantities and of such characteristics and duration as are or are likely to be injurious to public welfare, to the health of human, plant, or animal life, or cause damage to property or create a disagreeable or unnatural odor or obscure visibility or which unreasonably interfere with the enjoyment of life or property.</p> <p>II. "Air contaminant" means soot, cinders, ashes, any dust, fume, gas, mist (other than water), odor, toxic or radioactive material, particulate matter, or any combination thereof.</p> <p>III. "Emission" means a release into the outdoor atmosphere of air contaminants.</p>	<p>The definitions of "air pollution," "air contaminant," and "emissions" remain the same.</p>
<p><b>125-C:2 Definitions, continued</b></p> <p>I-a. "Affected source," any stationary source, the construction, installation, operation, and modification of which is subject to Title V, Clean Air Act, 42 U.S.C. 7401 et seq., as amended.</p> <p>III-a. "Biomass" means organic matter used as a fuel, not including wood derived from construction and demolition debris, as defined in RSA 149-M:4, IV-a; wood which has been chemically treated; or agricultural crops or aquatic plants or byproducts from such crops or plants, which have been used to rehabilitate a contaminated or brownfields site through a process known as "phytoremediation."</p> <p>V. [Omitted.]</p> <p>V-a. "Commissioner," the commissioner of the department of environmental services.</p> <p>V-b. "Department," the department of environmental services.</p> <p>V-c. "Consumer products," any substance,</p>	<p><b>125:79 Definitions, continued</b></p> <p>IV. "Agency" means the air pollution control agency created by this subdivision.</p> <p>V. "Commission" means the air pollution control commission created by this subdivision.</p>	<p>These terms are specific to their acts and not defined in the other act. RSA 125-C adds a definition for "affected source" (Title V source). In the 1980s, the Air Resources "Agency" became a "Division" of the "Department" of Environmental Services, and the Air "Commission" became the Air Resources Council.</p>

RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p>product (including paints, coatings, and solvents), or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of air contaminants.</p> <p>VI-a. "Dioxin" means a group of chemical compounds that share certain similar chemical structures and mode-of-action biological characteristics, including a total of 17 dioxin-like compounds that are members of 2 closely related families: chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs).</p> <p>VII. [Repealed.]</p> <p>VII-a. "Eligible biomass fuel" means fuel sources including biomass or neat biodiesel, as defined in RSA 362-A:1-a, I-b, and other neat liquid fuels that are derived from biomass.</p>		
<p><b>125-C:2 Definitions, continued</b></p> <p>IV. "Clean Air Act," the Clean Air Act, 42 U.S.C. 7401, and amendments thereto amending 42 U.S.C. 1857 et seq.</p> <p>VI. "Device which contributes to air pollution," any burner, furnace, machine, equipment or article which, in the opinion of the commissioner, contributes or may contribute to the pollution of the air.</p>	<p><b>125:91 Definitions.</b> The following words when used in this subdivision shall have the meanings described herein unless the context clearly indicates otherwise:</p> <p>I. "Device which contributes to air pollution" shall mean any burner, furnace, machine, equipment or article which, in the opinion of the air pollution control agency, contributes or may contribute to pollution of the air. Said devices shall be described in a list promulgated by the air pollution control agency setting out three classes of devices as follows:</p> <p>(a) Class A devices shall include any residential or commercial heating plant which falls within ranges of heat input or particulate matter output established in the New Hampshire state implementation plan pursuant to the Clean Air Act;</p> <p>(b) Class B devices shall include but not be limited to industrial heating plants and furnaces and processes which generate and discharge byproducts into the air;</p> <p>(c) Class C devices shall include devices designed for the incineration of waste or refuse but shall not include residential incinerators;</p> <p>II. . "Clean Air Act" shall mean the Clean Air Act of 1963, 42 U.S.C. 7401, and amendments thereto amending 42 U.S.C. 1857 et seq.</p>	<p>These terms were updated in RSA 125-C.</p>
<p><b>125-C:2 Definitions, continued</b></p> <p>VIII-a. "Hearing," the opportunity for the submission of either written or oral comments, or the submission of both written and oral comments.</p> <p>VIII-b. "Major deviation from requirement" means the violator deviated from a requirement of a statute or rule to such an extent that there is substantial non-compliance.</p> <p>VIII-c. "Major potential for harm" means a substantial likelihood of causing unhealthful air quality.</p> <p>IX. [Repealed.]</p>		<p>These terms are not defined in RSA 125.</p>



RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p>IX-a. "Non-Title V Source," any stationary source other than an affected source which, in the opinion of the commissioner, contributes or may contribute to the pollution of the air.</p> <p>IX-b. "Minor deviation from requirement" means the violator deviated partially from a requirement of a statute or rule such that most of the requirement was met.</p> <p>IX-c. "Minor potential for harm" means a small likelihood of causing unhealthful air quality.</p> <p>IX-d. "Moderate deviation from requirement" means the violator significantly deviated from a requirement of a statute or rule but some requirements were implemented as intended, such that approximately half the requirements were met.</p> <p>IX-e. "Moderate potential for harm" means a moderate likelihood of causing unhealthful air quality.</p> <p>IX-f. "Particulate matter" means any material, including lead, but not uncombined water, which is or has been suspended in air or other gases and which exists in a finely divided form as a liquid or solid at standard conditions.</p> <p>X-a. "Repeat violation" means a subsequent violation of a statute or rule at a facility or by a person for which a letter of deficiency, administrative order, or administrative fine has previously been issued by the department.</p> <p>XI. "Stationary source," any building, structure, facility, or installation which emits or which may emit any regulated air pollutant.</p>		
<p><b>125-C:2 Definitions, continued</b></p> <p>X. "Person," any individual, partnership, firm or co-partnership, association, company, trust, corporation, department, bureau, agency, private or municipal corporation, or any political subdivision of the state, the United States or political subdivisions or agencies thereof, or any other entity recognized by law as subject to rights and duties.</p>	<p><b>125:79 Definitions, continued</b></p> <p>VI. "Person" means any individual, partnership, firm or co-partnership, association, syndicate, company, trust, corporation, department, bureau, agency, private or municipal corporation, or any other entity recognized by law as the subject of rights and duties.</p>	<p>Similar wording; no substantive difference.</p>
<p><b>125-C:4 Rulemaking Authority; Subpoena Power.</b></p> <p>I. The commissioner shall adopt rules under RSA 541-A, relative to:</p> <p>(a) The prevention, control, abatement, and limitation of air pollution, including, but not limited to, open air source pollution, mobile source pollution, and stationary source pollution.</p> <p>(b) Primary and secondary ambient air quality standards.</p> <p>(c) Procedures to meet air pollution emergencies, as authorized by RSA 125-C:9.</p> <p>(d) The establishment and operation of a statewide permit system, as authorized by RSA 125-C:6, XIV, RSA 125-C:11, I and RSA 125-C:11, I-a.</p> <p>(e) Devices, in addition to those devices defined under RSA 125-C:2, subject to the permit requirements of RSA 125-C:11, as authorized by RSA 125-C:11, II.</p>	<p><b>125:80 Administration.</b></p> <p>I. The department of health and welfare, division of public health services, is hereby designated as the state air pollution control agency.</p> <p>III. There is hereby created and established an air pollution control commission which shall be composed of nine members, including one representing the steam power generating industry; one representing the fuels industry; one representing the manufacturing component of industry; one representing the field of municipal government; ; one representing the field of recreation; one licensed practicing physician; and three appointed at large. The members shall be residents of the state and shall be appointed by the governor with the consent of council. Each member shall serve for a term of four years and until his successor shall be appointed and qualified; provided</p>	<p>The state air agency was removed from the Department of Health and Welfare and became part of the Department of Environmental Services (DES) in 1986.</p> <p>Authority to delegate in RSA 125-C is found in section 8.</p> <p>The structure of the DES and the Air Resources Council is established in RSA 21-</p>

RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p>(f) The exemption of certain devices and non-Title V sources from the permit requirements of RSA 125-C:11, I and the conformance of exempted devices to established standards, as authorized by RSA 125-C:11, I.</p> <p>(g) The forms and information required on applications for temporary and permanent permits required under RSA 125-C:11, as authorized by RSA 125-C:12, I.</p> <p>(h) Notification of and public hearing on permit applications, including exemptions from those requirements, as authorized by RSA 125-C:12, II.</p> <p>(i) Fees for permit application and review, as authorized by RSA 125-C:12, IV-d.</p> <p>(j) Procedures for permit application review, as authorized by RSA 125-C:11, IV, and criteria for permit denial, suspension or revocation, as authorized by RSA 125-C:13.</p> <p>(k) Procedures for air testing and monitoring and recordkeeping, as authorized by RSA 125-C:6, XI.</p> <p>(l) Procedures for receiving violation complaints and for rules enforcement, as authorized by RSA 125-C:15, I.</p> <p>(m) Procedures for granting variances, as authorized by RSA 125-C:16.</p> <p>(n) The manufacture, use, or sale of consumer products for purposes of implementing RSA 485:16-c.</p> <p>(o) Applicability thresholds for emissions of particulate matter, mercury, and dioxin as provided in RSA 125-C:10-b, VII(f).</p> <p>(p) The duration of time during which no additional best available control technology determination is required as provided in RSA 125-C:10-b, IV and VI.</p> <p>(q) Procedures for establishing standards for and certification of any material, that is not an exempt fuel, to be combusted in a device at an affected source subject to RSA 125-C:10-b.</p> <p>(r) Standards and testing requirements for biomass and eligible biomass fuel as authorized by RSA 125-C:6, XIV-a.</p> <p>I-a. In adopting rules under paragraph I, the department may incorporate by reference standards issued by the California air resources board relative to certification and testing of vapor recovery equipment.</p> <p>I-b. In adopting rules under subparagraph I(n), the department may incorporate by reference other state test methods and procedures that are referenced in the model rules of the Ozone Transport Commission (OTC) concerning consumer products, as defined in RSA 125-C:2, V-c.</p> <p>II. The commissioner is authorized to issue subpoenas requiring the attendance of such witnesses and the production of such evidence and to administer such oaths and to take such testimony as he may deem necessary.</p>	<p>that of the original appointments, three shall be appointed for a term of two years, three for a term of three years and three for a term of four years. The members shall receive no compensation for their services but shall receive necessary travel and other expenses while engaged in actual work of the commission. The governor and council shall annually select a chairman from the membership at large and one of the commission members to serve as vice-chairman. When the chairman is absent, it shall be the duty of the vice-chairman to assume and administer the duties of the chairman. The commission shall hold meetings on the call of the chairman or the director of the state air pollution control agency. It shall be the duty of the commission to make suggestions to, and to advise the agency concerning, the policies, plans, and goals to be attained in the administration of this subdivision; to hold such hearings; to issue notices of hearings, and subpoenas requiring the attendance of such witnesses and the production of such evidence and to administer such oaths and to take such testimony as the commission may deem necessary; and to keep the governor and council informed on matters relative to air pollution. However, no such rules, regulation, amendment or repeal shall be adopted except after public hearing. Said public hearing shall be held by the commission provided that not less than thirty days' notice thereof shall be given by public advertisement stating the date, time, and place of hearing; provided further that no such rule, regulation, amendment, or repeal shall be or become effective until thirty days after such public hearing, or until such time as shall be determined by the commission to be reasonable and necessary.</p>	<p>O. RSA 21-O:11, I, which establishes the Air Resources Council and requires that the members adequately disclose all conflicts, was submitted as a SIP revision on December 31, 2012, along with the infrastructure SIP for the 2008 Ozone standard.</p> <p>Procedural rules are found in Env-A 200.</p>

RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p><b>RSA 125-C:6 Powers and Duties of the Commissioner.</b> – In addition to the other powers and duties granted herein, the commissioner shall have and may exercise the following powers and duties:</p> <p>I. Exercising general supervision of the administration and enforcement of this chapter and all rules adopted and orders promulgated under it;</p> <p>II. Developing a comprehensive program and provide services for the study, prevention, and abatement of air pollution;</p> <p>III. Conducting and encouraging studies relating to air quality;</p> <p>IV. Collecting and disseminating the results of studies relating to air quality;</p> <p>V. Advising, consulting, and cooperating with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air quality;</p> <p>VI. Encouraging local units to promote cooperation by the people, political subdivisions, industries, and others in preventing and controlling air pollution in the state;</p> <p>VI-a. Encouraging the recycling of waste oil by allowing qualified marketers to sell, and qualified facilities to burn, a mixture that consists of at least 90 percent virgin no. 6 oil and the remainder complying with the used fuel oil specifications in 40 CFR, section 279.11, table 1;</p> <p>VII. Entering at all reasonable times in or upon any private or public property, except private residences, for the purpose of inspecting or investigating any condition which is believed to be either an air pollution source or in violation of any of the rules or orders promulgated hereunder. Any information, other than emission data, relating to secret processes or methods of manufacture or production obtained in the course of such inspection or investigation shall not be disclosed by the commissioner without permission of the person whose source is inspected or investigated;</p> <p>VIII. Accepting, receiving, and administering grants or other funds or gifts for the purpose of carrying out any of the functions of this chapter, including such monies given under any federal law to the state for air quality control activities, surveys, or programs;</p> <p>IX. Consulting the air resources council established by RSA 21-O:11 on the policies and plans for the control and prevention of air pollution;</p> <p>X. Exercising all incidental powers necessary to carry out the purposes of this chapter;</p> <p>XI. Conducting emission tests and requiring owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the commissioner on</p>	<p><b>RSA 125:81 Powers and Duties of the Agency.</b> – In addition to the other powers and duties granted herein, the agency shall have and may exercise the following powers and duties:</p> <p>I. To exercise general supervision of the administration and enforcement of this subdivision and all rules and regulations and orders promulgated by the commission;</p> <p>II. To develop a comprehensive program and provide services for the study, prevention, and abatement of air pollution;</p> <p>III. To conduct and encourage studies relating to air pollution;</p> <p>IV. To collect and disseminate the results of studies relating to air pollution;</p> <p>V. To advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air pollution;</p> <p>VI. To encourage local units to promote cooperation by the people, political subdivisions, industries, and others in preventing and controlling air pollution in the state;</p> <p>VII. To enter at all reasonable times in or upon any private or public property, except private residences, for the purpose of inspecting or investigating any condition which is believed to be either an air pollution source or in violation of any of the rules or regulations or orders promulgated hereunder. Any information relating to secret processes or methods of manufacture or production obtained in the course of such inspection or investigation shall not be disclosed by the director without permission of the person whose source is inspected or investigated;</p> <p>VIII. To accept, receive, and administer grants or other funds or gifts for the purpose of carrying out any of the functions of this act, including such monies given under any federal law to the state for air quality control activities, surveys, or programs;</p> <p>IX. To consult the commission on the policies and plans for the control and prevention of air pollution;</p> <p>X. To exercise all incidental powers necessary to carry out the purposes of this subdivision;</p> <p>XI. The agency shall have the authority to conduct emission tests and to require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the agency on the nature and amounts of emissions from such stationary sources. The agency shall have the authority to make such data available to the public and as correlated with any applicable emission standards;</p> <p>XII. The agency shall have the authority to carry out a program of inspection and testing of all modes of transportation, to enforce compliance with</p>	<p>Substantially the same language through subsection XIV, where RSA 125:81 ends.</p>

RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p>the nature and amounts of emissions from such stationary sources. The commissioner shall have the authority to make such data available to the public and as correlated with any applicable emission standards;</p> <p>XII. Carrying out a program of inspection and testing of all modes of transportation, to enforce compliance with applicable emission standards when necessary and practicable and to control or limit the operation of motor vehicular and other modes of transportation when in the opinion of the commissioner such modes of transportation are producing or pose an imminent danger of producing levels of air pollutants that will result in a violation of an ambient air quality standard, or that will result in a significant deterioration, as defined in applicable federal regulations, of existing air quality in an area classified as a "clean air" area by state or federal regulations;</p> <p>XIII. Coordinating and regulating the air pollution control programs of political subdivisions of the state and entering agreements with said subdivisions to plan or implement programs for the control and abatement of air pollution;</p> <p>XIV. Establishing and operating a statewide system under which permits shall be required for the construction, installation, operation, or modification of air pollution devices and sources, which system shall be established pursuant to RSA 125-C:11 and the sections which follow. The authority vested in the commissioner by this section shall include the power to delay or prevent any construction, modification, or operation of said air pollution sources and modifications which, in the opinion of the commissioner, would cause the ambient air pollution level in the locality of such construction, modification, or operation to exceed limits for ambient concentrations established by the New Hampshire state implementation plan adopted pursuant to the Clean Air Act as amended, or which construction, modification, or operation would, in the opinion of the commissioner, violate any provision of any land use plan established by the New Hampshire state implementation plan;</p> <p>XIV-a. Establishing fuel quality standards and testing requirements for biomass other than round wood and wood chips derived from round wood or waste wood such as limbs, branches, brush, slash, bark, stumps, sawdust, saw mill trimmings, clean pallets, and untreated wood scraps from furniture and other manufacture and eligible biomass fuel related to the combustion of such materials at stationary sources. The commissioner may establish such standards as necessary to maintain statewide compliance with Clean Air Act standards and RSA 125-I.</p> <p>XV. Implementing a program of prevention of significant deterioration of ambient air quality by</p>	<p>applicable emission standards when necessary and practicable and to control or limit the operation of motor vehicular and other modes of transportation when in the opinion of the director such modes of transportation are producing or pose an immediate danger of producing unacceptable levels of air pollutants;</p> <p>XIII. The agency shall have the authority to coordinate and regulate the air pollution control programs of civil subdivisions of the state and to enter agreements with said subdivisions to plan or implement programs for the control and abatement of air pollution;</p> <p>XIV. The agency shall have the authority to establish and operate a statewide system under which permits shall be required for the construction and operation of new stationary sources of air pollution and the construction and operation of modifications of existing sources, which system shall be established pursuant to RSA 125:90 et seq. The authority vested in the agency hereby shall include the power to delay or prevent any construction, modification, or operation of said air pollution sources and modifications which, in the opinion of the director, would cause the ambient air pollution level in the locality of such construction, modification, or operation to exceed limits for ambient concentrations established by the New Hampshire state implementation plan adopted pursuant to the Clean Air Act as amended (Public Laws collected under 42 U.S.C. 1857 et seq.) or which construction, modification, or operation would, in the opinion of the director violate any provision of any land use plan established by the said New Hampshire state implementation plan;</p>	<p>RSA 125-C establishes a PSD permit program.</p>

RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p>establishing air quality increments limiting the maximum allowable increases in the amounts of air pollutants provided such increments are not less stringent than those specified in the Clean Air Act and amendments thereto, and in regulations promulgated thereunder;</p> <p>XVI. Establishing an air quality monitoring equipment replacement program to provide for sufficient annual replacement to meet federal Environmental Protection Agency guidelines and to assure the reliability and accuracy of the network equipment.</p> <p>XVII. Implementing a program to control the emissions of air contaminants from consumer products for purposes of RSA 485:16-c, by establishing limits on the manufacture, use, or sale of such products, provided that such limits are not less stringent than those established under the Clean Air Act and amendments thereto, and in regulations promulgated under the Clean Air Act.</p>		<p>RSA 125-C authorizes DES to establish an air quality monitoring program to meet EPA guidelines.</p>
<p><b>125-C:8 Administration of Chapter; Delegation of Duties.</b> – The commissioner shall be responsible for the implementation of this chapter and any rule adopted hereunder and may delegate to a subordinate or subordinates any and all duties vested in him, except rulemaking authority.</p>	<p><b>125:80 Administration</b></p> <p>II. The director of the division of public health services shall designate an individual to be director of the agency, hereinafter referred to as the director, who shall be responsible for implementation of this subdivision and any regulations promulgated hereunder, and who may delegate to a subordinate or subordinates any or all duties vested in him. The director shall act as technical secretary to the air pollution commission, without voting power.</p>	<p>RSA 125-C does not allow the commissioner to delegate rulemaking duties.</p>
<p><b>125-C:9 Authority of the Commissioner in Cases of Emergency.</b> – Whenever the commissioner finds that an air pollution emergency exists requiring immediate action to protect the public health, welfare, or safety, he may with consent of the governor and council issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith. The commissioner shall rescind or abate such order as soon as the emergency ceases to exist.</p>	<p><b>125:84 Authority of the Director in Cases of Emergency.</b> – Whenever the director finds that an air pollution emergency exists requiring immediate action to protect the public health, welfare, or safety, he may with consent of the governor and council issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith. The director shall rescind or abate such order as soon as the emergency ceases to exist.</p>	<p>The wording is substantially the same.</p>
<p><b>125-C:10 Devices Contributing to Air Pollution.</b> –</p> <p>I. No person shall install, construct, operate, or modify any device or non-Title V source which contributes to air pollution except as prescribed by this chapter.</p> <p>II. No person shall construct, operate or modify an affected source which contributes to air pollution except as prescribed by this chapter.</p>	<p><b>125:90 Devices Contributing to Air Pollution.</b> – No person shall install or operate any device which contributes to air pollution except as prescribed by this subdivision.</p>	<p>The wording in RSA 125-C was expanded to include Title V sources.</p>
<p><b>125-C:10-a Municipal Waste Combustion Units.</b>– Any municipal waste combustor, as defined in RSA 125-M:2, XI, with a design capacity of at least 35 tons per day but no more than 250 tons per day of municipal solid waste, as defined in RSA</p>		<p>No equivalent provision in RSA 125.</p>

RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p>125-M:2, X, shall be limited to the following levels of emissions, unless otherwise provided for by a more stringent federal regulation, or by other state statute:</p> <p>I. Particulate matter: 27 milligrams/dry standard cubic meter, corrected to 7 percent oxygen, 3-run average (run duration specified in test method).</p> <p>II. Opacity: 10 percent (6-minute average), 30 6-minute averages.</p> <p>III. Cadmium: 0.040 milligrams/dry standard cubic meter, corrected to 7 percent oxygen, 3-run average (run duration specified in test method).</p> <p>IV. Lead: 0.44 milligrams/dry standard cubic meter, corrected to 7 percent oxygen, 3-run average (run duration specified in test method).</p> <p>V. Mercury: 0.028 milligrams/dry standard cubic meter, corrected to 7 percent oxygen, or 85 percent control efficiency, 3-run average (run duration specified in test method).</p> <p>VI. Sulfur dioxide: 29 parts per million by volume, or 25 percent of the potential sulfur dioxide emission concentration, corrected to 7 percent oxygen (dry basis), monthly block geometric average concentration or percent reduction.</p> <p>VII. Hydrogen chloride: 29 parts per million by volume, or 5 percent of the potential hydrogen chloride emission concentration, corrected to 7 percent oxygen (dry basis), 3-run average (minimum run duration is 1 hour).</p> <p>VIII. Dioxins/furans: 60 nanograms/dry standard cubic meter (total mass), corrected to 7 percent oxygen, where an electrostatic precipitator- based emission control system is employed; or 30 nanograms/dry standard cubic meter (total mass) corrected to 7 percent oxygen, where an electrostatic precipitator-based emission control system is not employed, 3-run average (minimum run duration is 4 hours).</p>		
<p><b>125-C:11 Permit Required. –</b></p> <p>I. The construction, installation, operation, or modification of any device or non-Title V source as defined under RSA 125-C:2, and as further defined by rules adopted by the commissioner shall be prohibited unless the source possesses a temporary permit or operating permit whether a permit-by-notification, general permit, or an individual operating permit issued by the commissioner. The commissioner may by rule exempt certain devices or non-Title V sources from the requirements of this section.</p> <p>I-a. The construction, installation, operation, or modification of an affected source shall be prohibited unless the affected source possesses and complies with a temporary permit, general permit, or individual operating permit issued by the commissioner in accordance with the requirements of the Clean Air Act. The term of the general permit or permit to operate shall not exceed 5 years.</p>	<p><b>125:92 Permit Required. -</b> An operating permit shall be required after February 1, 1973 for the installation or operation of any device described in regulations hereby authorized to be issued by the agency to implement the provisions of RSA 125:81, XIV and this subdivision. Permits shall be of three classes and shall be issued for an indefinite period. The director may make such orders as he deems necessary for the modification of any device for which a permit has been applied for or issued hereunder and the grant of any permit may be made conditional upon compliance with said orders.</p>	<p>RSA 125-C has been updated to provide for various kinds of permits, eliminating the division of permits into three classes.</p>

RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p>II. A temporary permit, which may contain conditions, shall be required prior to commencement of construction or installation of any new or modified device or non-Title V source except for those devices or non-Title V sources which are authorized to construct and operate pursuant to a permit-by-notification or a general permit. A temporary permit shall be in effect until it expires, an operating permit is issued, or until sooner revoked by the commissioner. Such permit shall contain the emission limits the device or non-Title V source is required to meet, and shall be issued by the commissioner upon a finding that the device or non-Title V source will meet such limits and will not result in a violation of any air quality standard or regulation in force under this chapter.</p> <p>III. An individual operating permit, which may contain conditions, shall be issued with respect to a device or non-Title V source for which a temporary permit is in effect, upon a finding by the commissioner, following operational testing, where required, that the device or non-Title V source meets the applicable emission limits and that its operation will not result in a violation of any air quality standard or regulation in force under this chapter.</p> <p>III-a. [Repealed.]</p> <p>III-b. A general permit, which may contain certain conditions, may be issued with respect to a Title V source category if the commissioner finds that there is more than one stationary source, area source, or device in the same category and the stationary sources, area sources, or devices in that category are all subject to the same regulatory requirements.</p> <p>III-c. The commissioner may adopt rules providing for a permit-by-notification with respect to a source category, provided that the commissioner finds that there is more than one device or non-Title V source in the source category, and that the devices or non-Title V sources in that category are all subject to the same regulatory requirements.</p> <p>IV. A temporary permit, which may contain conditions, shall be required prior to commencement of construction or installation of any new or modified affected source, except for those affected sources which are authorized to be constructed pursuant to a general permit. The applicant shall be required to conduct preconstruction or premodification review procedures prior to commencement of construction of any new major stationary source, device, or modification to any existing major stationary source or device. Such procedures shall be sufficient to allow the commissioner to make determinations that the proposed construction or modification will not cause or contribute to a failure to attain or maintain any ambient air quality</p>		



RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p>standard, significant deterioration of air quality, or a violation of any applicable emission limitation or standard of performance. Such preconstruction and premodification review requirements shall be no less stringent than, and shall require that no permit shall be issued for a source unless such source meets all the requirements for review and for obtaining a permit prescribed in the Clean Air Act.</p> <p>V. The applicant for a permit to operate shall be required to conduct preconstruction or premodification review procedures prior to commencement of construction of any affected source. Such procedures shall be sufficient to allow the commissioner to make determinations that the proposed construction or modification will not cause or contribute to a failure to attain or maintain any ambient air quality standard, significant deterioration of air quality, or a violation of any applicable emission limitation or standard of performance. The applicant shall submit the required information to the commissioner prior to the commencement of construction or modification. Such preconstruction review and premodification review requirements shall be no less stringent than those prescribed in the Clean Air Act, 42 U.S.C. section 7401 et seq., as amended.</p>		
<p><b>125-C:12 Administrative Requirements. –</b></p> <p>I. Applications for permits shall be upon such forms, and shall include such information, as the commissioner requires under rules adopted pursuant to RSA 541-A in order to determine the nature of the air pollution potential for such device or non-Title V source.</p> <p>II. The commissioner shall act upon a permit application within a reasonable period of time. Prior to such action, the commissioner shall provide notice of the application by publication in at least one newspaper of general circulation. The commissioner shall also provide an opportunity for a hearing to interested persons. The requirement of public notice and hearing shall not apply to such devices or sources that will have, in the opinion of the commissioner, an insignificant effect on air quality. The commissioner may adopt rules relative to the requirements of public notice and hearing for such devices or sources.</p> <p>III. Any person aggrieved by a decision of the commissioner to grant in whole or in part, with or without conditions, or to deny a permit who wishes to appeal the decision shall proceed in accordance with RSA 21-O:14.</p> <p>IV. As a condition of any permit or authorization required or any requested applicability determination, the commissioner may require payment of a fee to cover the reasonable costs of reviewing and acting upon the application for a permit.</p> <p>IV-a. The applicant shall pay any cost or expense</p>	<p><b>125:93 Requirement for Class B Permit. -</b> A class B permit shall be required for the installation or operation of any device listed by the agency in regulations. Said permit shall be issued by the agency subject to the following conditions:</p> <p>I. Application therefor to the agency on an agency-supplied form by the owner or operator of the device; provided, however, that initial applications hereunder for devices in operation on April 1, 1972, shall be made prior to May 1, 1972;</p> <p>II. Submission with said application of a description of the device and such engineering plans, specifications or other information as the agency shall require to determine the air pollution potential of the device;</p> <p>III. Upon passage of thirty days from the date of application unless the agency shall for cause refuse to grant a permit after hearing as provided in RSA 125:94; provided, however, that the initial permits issued hereunder shall be issued prior to February 1, 1972 without regard to the thirty-day deadline provided in this paragraph.</p>	<p>RSA 125-C has done away with the classes of permits and authorizes DES to act upon permit applications within a reasonable period of time rather than 30 days, as required by RSA 125.</p> <p>RSA 125-C requires public notice and the opportunity for a hearing on a proposed permit.</p> <p>RSA 125-C authorizes DES to collect permit application and emission fees.</p>

RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p>associated with public notices or notifications in the permit process.</p> <p>IV-b. As a condition of any permit or authorization required, the commissioner may require payment of an annual emissions fee sufficient to cover the costs of implementing or enforcing the permit program authorized by this chapter including:</p> <ul style="list-style-type: none"> <li>(a) The costs of reviewing and acting upon any permit renewal;</li> <li>(b) Emissions and ambient monitoring, for those costs incurred under the permitting program;</li> <li>(c) Preparing generally applicable rules or guidance;</li> <li>(d) Modeling, monitoring, analyses, and compliance demonstrations;</li> <li>(e) Preparing inventories and tracking emissions; and</li> <li>(f) Inspections and enforcement.</li> </ul> <p>IV-c. In lieu of the annual emissions fee specified in paragraph IV-b, as a condition of any permit or authorization required, the commissioner may require payment of a one-time fee sufficient to cover the costs of implementing or enforcing the permit program authorized by this chapter including the provisions specified in paragraph IV-b.</p> <p>IV-d. The commissioner shall adopt rules relative to a fee schedule for applicants and the collection of fees under the schedule. All fees and monetary grants, gifts, donations, or interest generated by these funds shall be deposited with the state treasurer in a special nonlapsing fund to be known as the air resources fund and shall be continually appropriated to the department for the administration of this chapter.</p> <p>V. Fees required to be collected from affected sources by the Clean Air Act as authorized under this section shall be deposited in the air resources fund, shall be accounted for separately, and shall be used by the commissioner for the establishment and operation of a statewide system of permitting for the construction, operation, or modification of any new or existing affected source.</p>		
<p><b>125-C:13 Criteria for Denial; Suspension or Revocation; Modification. –</b></p> <p>I. The commissioner shall deny an application for any permit or authorization if, on the basis of evidence available to the commissioner, the commissioner determines:</p> <ul style="list-style-type: none"> <li>(a) That the device or non-Title V source for which the permit or authorization is sought will result in a violation of any standard or rule in force under this chapter; or</li> <li>(b) That the device or non-Title V source will contribute disproportionately to pollution of the air in comparison with other similar sources able to perform the same function that are currently available; or</li> </ul>	<p><b>RSA 125:94 Refusal to Grant; Suspension; Hearing. -</b> The agency may refuse to grant any class B or C permit if:</p> <ul style="list-style-type: none"> <li>I. In the judgment of the director, the device for which a permit is sought contributes or may contribute disproportionately to pollution of the air in comparison to other devices of its type currently in use; or</li> <li>II. The device for which a permit is sought should, in the opinion of the director, should be fitted with or modified by equipment designed to reduce the air pollution capacity of the device and the applicant refuses to comply with an order to that effect;</li> <li>III. The director may suspend after hearing a permit previously issued for the causes set out in</li> </ul>	<p>The criteria for denying a permit have changed slightly, although 125:94, I, and 125-C:13, I(b) are the same. RSA 125-C, I(c) also acknowledges the need to prevent significant deterioration of air quality. In addition, RSA 125-C, II, provides more criteria for suspending permits.</p>

RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p>(c) That the device or non-Title V source is located in a "clean air" area designated by state or federal rules or regulations and will or is reasonably likely to cause significant deterioration of the existing air quality in a part of the area.</p> <p>II. The commissioner may suspend or revoke any permit or authorization issued hereunder if, following a hearing, the commissioner determines:</p> <p>(a) That the permit holder or registrant has committed a violation of this chapter or any rule, order, or permit conditions in force and applicable to it; or</p> <p>(b) That emissions from the device or non-Title V source to which the permit applies, alone or in conjunction with other sources of the same pollutants, presents an immediate danger to the public health.</p> <p>III. The commissioner may order modification of any source of air pollution holding a valid permit issued under this chapter in the event that the commissioner determines, following a hearing:</p> <p>(a) That the device or non-Title V source to which the permit applies fails to meet existing emission limits established by state or federal rule or regulation;</p> <p>(b) That the device or non-Title V source is resulting or is reasonably likely to result in a violation of an air quality standard in force.</p> <p>IV. The commissioner may terminate, modify, revoke, or reissue for cause any permit or authorization issued to an affected source prior to expiration of such permit consistent with the requirements of the Clean Air Act.</p>	<p>RSA 125:94, I and II, above if, in the opinion of the director, the permit holder has failed to comply with any order for modification issued by the director.</p>	
<p><b>125-C:14 Rehearings and Appeals. –</b> Administrative appeals from decisions of the commissioner made under the provisions of this chapter shall be heard by the air resources council under RSA 21-O:11, IV.</p>	<p><b>125:82 (See below.)</b></p>	<p>See below.</p>
<p><b>125-C:15 Enforcement. –</b> I. Whenever the commissioner or the commissioner's authorized representative finds that any device, non-Title V source, affected source of air pollution, or any other source of air pollution has resulted in a violation of any of the provisions of this chapter or any rules in force hereunder, or any condition in a permit issued under this chapter, the commissioner shall issue a notice of violation and, where appropriate, an order of abatement establishing a compliance schedule with which the device, non-Title V source, affected source, or any other source shall comply. Any order of abatement shall become final and enforceable by the commissioner within 30 days of its issuance unless an appeal is filed with the air resources council before the expiration of said 30-day period. The council shall hold a hearing on any such appeal promptly, and shall thereafter issue a decision</p>	<p><b>125:82 Notification of Violation and Order of Abatement. -</b> Whenever the director or his authorized representative finds upon inspection and examination that a source of air pollution as constructed, operated, or maintained has resulted in the violation of any of the provisions of this subdivision or any codes, rules, or regulations of the commission, he shall notify any person found to be causing, allowing, or permitting such violation of the nature of that violation and order that prior to a time fixed by the director, which time shall not be later than thirty days from the date of service of the notice, that such person shall cease and abate causing, allowing or permitting such violation and take such action as may be necessary for the source of air pollution to be constructed, operated or maintained in compliance with this subdivision and codes, rules, or regulations of the commission, unless a variance is granted in accordance with</p>	<p>Both laws authorize DES to issue notices of violation and orders of abatement. RSA 125-C now provides 30 days in which to appeal an order to the Air Resources Council, up from the 15 days allowed by RSA:82.</p>

RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p>upholding, modifying or abrogating the commissioner's order of abatement or any part thereof. The council's decision shall become final 10 days after it is issued. Upon a finding by the commissioner that there is an imminent and substantial endangerment to the public health or welfare or the environment, the commissioner shall issue an order of abatement requiring immediate compliance and said order shall be final and enforceable upon issuance, but may be appealed to the council within 30 days of its issuance, and the council may, after hearing, uphold, modify, or abrogate said order.</p> <p>I-a. Whenever the commissioner or his authorized representative finds that a gasoline dispensing facility subject to Stage II vapor recovery system requirements has resulted in a violation of any provisions of this chapter or the rules in force hereunder, the commissioner or authorized representative shall issue a stop use order and compliance schedule with which the gasoline dispensing facility shall comply. Any stop use order shall become final and enforceable upon issuance, but may be appealed to the council within 10 days of its issuance and the council, after hearing, may uphold, modify, or abrogate such order.</p> <p>I-b. The commissioner of the department of environmental services, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this chapter, any rule adopted pursuant to this chapter, or any permit, compliance schedule, stop use order, or order of abatement, issued pursuant to this chapter; or upon any person who makes or certifies a material false statement relative to any document or information which is required to be submitted to the department pursuant to this chapter or any rule adopted pursuant to this chapter. Rehearings and appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this paragraph shall not preclude the imposition of further penalties under this chapter. The proceeds of administrative fines imposed pursuant to this paragraph shall be deposited in the general fund.</p> <p>(a) Notice and hearing prior to the imposition of an administrative fine shall be in accordance with RSA 541-A and procedural rules adopted by the commissioner pursuant to RSA 541-A:16.</p> <p>(b) The commissioner shall determine fines based on the following:</p> <p>(1) For a minor deviation from a requirement causing minor potential for harm, the fine shall be not less than \$100 and not more than \$1,000.</p> <p>(2) For a minor deviation from a requirement</p>	<p>section 83. Any person aggrieved by the finding or order of the agency may request a hearing before the commission, at any time within fifteen days after notification, and the commission may affirm the finding or order of the agency or reverse or modify the finding or order of the agency. Any order or decision of the commission may be the subject of a motion for rehearing or of any appeal in the following manner:</p> <p>I. Motion for reconsideration. Within twenty days after any decision of the commission, any person whose rights may be directly affected may apply to the commission for reconsideration of any matter determined by the commission in its decision, specifying in the motion for reconsideration the grounds therefor, and the commission may reconsider and revise its decision if in the opinion of the commission good reason therefor is stated in said motion.</p> <p>II. Specifications. Such motion shall set forth fully every ground upon which it is claimed that the decision of the commission is unlawful or unreasonable. No appeal from any decision of the commission shall be taken unless the appellant shall have made application for reconsideration as herein provided, and when such application shall have been made, no ground not set forth therein shall be urged, relied on, or given any consideration by the court, unless the court for good cause shown shall allow the appellant to specify additional grounds.</p> <p>III. Action on Motion. Upon the filing of such motion for reconsideration the commission shall within ten days either grant or deny the same, and shall thereby either affirm, or modify, revise or reverse its decision.</p> <p>IV. Appeal from Decision on Motion for Reconsideration. Within thirty days after the application for reconsideration is denied, or if the application is granted then within thirty days after the decision on such reconsideration, the applicant may appeal by petition to the superior court.</p> <p>V. Burden of Proof. Upon the hearing the burden of proof shall be upon the party seeking to set aside the decision of the commission to show that the same is unreasonable or unlawful, and all findings of the commission upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable; and the order or decision appealed from shall not be set aside or vacated, except for errors of law, unless the court is persuaded by the balance of probabilities, on the evidence before it, that said decision is unjust or unreasonable.</p>	<p>RSA 125-C authorizes DES to impose administrative fines and provides an administrative fine matrix.</p>

RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p>causing moderate potential for harm, the fine shall be not less than \$601 and not more than \$1,250.</p> <p>(3) For a minor deviation from a requirement causing major potential for harm, the fine shall be not less than \$851 and not more than \$1,500.</p> <p>(4) For a moderate deviation from a requirement causing minor potential for harm, the fine shall be not less than \$601 and not more than \$1,250.</p> <p>(5) For a moderate deviation from a requirement causing moderate potential for harm, the fine shall be not less than \$851 and not more than \$1,500.</p> <p>(6) For a moderate deviation from a requirement causing major potential for harm, the fine shall be not less than \$1,251 and not more than \$1,750.</p> <p>(7) For a major deviation from a requirement causing minor potential for harm, the fine shall be not less than \$851 and not more than \$1,500.</p> <p>(8) For a major deviation from a requirement causing moderate potential for harm, the fine shall be not less than \$1,251 and not more than \$1,750.</p> <p>(9) For a major deviation from a requirement causing major potential for harm, the fine shall be not less than \$1,501 and not more than \$2,000.</p> <p>(c) The commissioner may assess an additional fine for repeat violations.</p>		
<p><b>125-C:15 Enforcement, continued</b></p> <p>II. Any violation of the provisions of this chapter, or of any rule adopted or order issued under it, or of any condition in a permit issued under it, shall be subject to enforcement by injunction, including mandatory injunction, issued by the superior court upon application of the attorney general. Any such violation shall also be subject to a civil forfeiture to the state of not more than \$25,000 for each violation, and for each day of a continuing violation.</p> <p>III. Any person who violates any of the provisions of this chapter, or any rule adopted or order issued under this chapter, or any condition of a permit issued under this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.</p> <p>IV. Notwithstanding RSA 651:2, any person may, in addition to any sentence of imprisonment, probation, or conditional discharge, be fined not more than \$25,000 if found guilty of any violation pursuant to RSA 125-C:15, III. Each day of violation shall constitute a separate offense.</p>	<p><b>125:85 Injunctive Relief.</b> A civil action may be instituted in superior court on behalf of the agency for injunctive relief to prevent the violation of the provisions of this subdivision or codes, rules or regulations of the commission, and said court may restrain in all such cases any person from violating any of the provisions of this subdivision or said codes, rules, or regulations.</p> <p><b>125:86 Penalty.</b> Any person who violates any of the provisions of RSA 125:78 through 94 inclusive or any rule or regulation of the air pollution control commission or who violates any order of the air pollution control agency shall be fined not less than one hundred dollars nor more than one thousand dollars and in addition thereto may be enjoined from continuing such violation. Each day any person neglects or refuses to comply therewith shall constitute a separate offense.</p>	<p>Both laws provide for injunctive relief and civil fines, but RSA 125-C increases the civil penalties from a maximum of \$1,000 to \$25,000 per day of violation, and provides for criminal fines of \$25,000 per day per violation and imprisonment.</p>
<p><b>125-C:18 Existing Remedies Unimpaired.</b> – No existing civil or criminal remedy for any wrongful action which is a violation of any code or rule adopted hereunder shall be excluded or impaired by this chapter.</p>	<p><b>125:87 Existing Remedies Unimpaired.</b> – No existing civil or criminal remedy for any wrongful action which is a violation of any code, rule, or regulation promulgated hereunder shall be excluded or impaired by this subdivision.</p>	<p>The wording is substantially the same.</p>

RSA 125-C (New)	RSA 125 (Old)	COMMENTS
<p><b>125-C:19 Protection of Powers.</b> – The powers and functions vested in the commissioner under the provisions of this chapter shall not be construed to affect in any manner the powers, duties and functions vested in the department of health and human services under any other provision of law.</p>	<p><b>125:88 Protection of Powers.</b> – The powers and functions vested in the department of health and welfare, division of public health services, under the provisions hereof, shall not be construed to affect in any manner the powers, duties, and functions vested in the department of health and welfare, division of public health services under any other provision of law.</p>	<p>The wording is similar and seeks to protect other powers and duties of the department of health and human services.</p>
<p><b>125-C:21 Severability.</b> – If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application; and, to this end, the provisions of this chapter are severable.</p>	<p><b>125:89 Severability of Provisions.</b> – If any provision of this subdivision or the application thereof to any person or circumstances is held invalid, such invalidity does not affect other provisions or applications of this subdivision which can be given effect without the invalid provision or application, and to this end the provisions of this subdivision are declared to be severable.</p>	<p>The wording is substantially the same.</p>

Attachment 3

New Hampshire Statutes  
Chapter 125-O: Air Pollution Control

- [Section 125-O:1 Findings and Purpose.](#)
- [Section 125-O:3 Integrated Power Plant Strategy.](#)

**TITLE X**  
**PUBLIC HEALTH**  
**CHAPTER 125-O**  
**MULTIPLE POLLUTANT REDUCTION PROGRAM**

**Section 125-O:1**

**125-O:1 Findings and Purpose. –**

I. The general court finds that while air quality has improved in recent years, scientific advances have demonstrated that adequate protection of public health, environmental quality, and economic well-being - the 3 cornerstones of New Hampshire's quality of life - requires additional, concerted reductions in air pollutant emissions. The general court also finds that the state's tradition of environmental leadership - setting an example for similarly feasible air pollution reductions from upwind jurisdictions - is also well served by additional emission reductions.

II. Recent studies and scientific evidence, documented in the New Hampshire Clean Power Strategy issued in January 2001 by the department of environmental services, indicates that significant negative human health and ecosystem impacts continue to be caused by air pollution. The general court finds that the substantial quantities of several harmful air pollutants that continue to be emitted from existing fossil fuel burning steam electric power plants, despite recent reductions in the emission of certain air pollutants from some of these facilities, contribute to these harmful impacts and that additional emissions reductions from these sources are warranted.

III. Specifically, the general court finds that aggressive further reductions in emissions of sulfur dioxide (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>), mercury, and carbon dioxide (CO<sub>2</sub>) must be pursued. These pollutants are primarily responsible for the human health and ecosystem impacts documented in the New Hampshire Clean Power Strategy issued in January 2001 by the department of environmental services.

IV. The general court finds that, as demonstrated by recent analyses, a high quality-of-life environment has been, and will continue to be, essential to New Hampshire's economic well-being. The general court further finds that protecting New Hampshire's high quality-of-life environment by reducing air pollutant emissions returns substantial economic benefit to the state through avoided health care costs; greater tourism resulting from healthier lakes and improved vistas; more visits by fishermen, hunters, and wildlife viewers to wildlife ecosystems, and a more productive forest and agricultural sector.

V. For the above reasons and others, the general court finds that substantial additional reductions in emissions of SO<sub>2</sub>, NO<sub>x</sub>, mercury, and CO<sub>2</sub> must be required of New Hampshire's existing fossil fuel burning steam electric power plants. Due to the collateral benefits and economies of scale associated with reducing multiple pollutant emissions at the same time, the general court finds that such aggressive emission reductions are both feasible and cost-effective if implemented simultaneously through a comprehensive, integrated power plant strategy.

VI. The general court also finds that the environmental benefits of air pollutant reductions can be most cost-effectively achieved if implemented in a fashion that allows for regulatory and compliance flexibility under a strictly limited overall emissions cap. Specifically, market-based approaches, such as trading and banking of emission reductions within a cap-and-trade system, allow sources to choose the most cost-effective ways to comply with established emission reduction requirements. This approach also provides sources with an incentive to reduce air pollutant emissions sooner and by greater amounts, promotes the development and use of innovative new emission control technologies, and specifies to the greatest extent possible performance results regarding environmental improvement rather than dictating expensive,



facility-specific, command-and-control regulatory requirements. The general court acknowledges that future federal regulations may mandate some facility-specific requirements regarding mercury reductions.

VII. The general court also finds that energy conservation results in direct reductions in air pollutant emissions. Thus, incentives for energy conservation are an important component of an overall clean power strategy. The general court recognizes that energy conservation expenditures made by utilities using system benefits charge funds can benefit all citizens and ratepayers.

**Source.** 2002, 130:2, eff. July 1, 2002.

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### **Section 125-O:3**

#### **125-O:3 Integrated Power Plant Strategy. –**

I. The department shall implement an integrated, multi-pollutant strategy to reduce air emissions from affected sources.

II. The integrated, multi-pollutant strategy shall be implemented in a market-based fashion that allows trading and banking of emission reductions to comply with the overall statewide annual emission caps established under RSA 125-O:3, III. Allowances, up to the amount of these caps, shall be allocated to each affected source based on the output of each affected source. The department shall make publicly available all allocations prior to the effective date of such allocations.

III. The strategy shall include implementation of the following statewide annual emissions caps:

- (a) 7,289 tons annually applicable to total sulfur dioxide (SO<sub>2</sub>) emissions from the affected sources;
- (b) 3,644 tons annually applicable to total oxides of nitrogen (NO<sub>x</sub>) emissions from the affected sources;
- (c) [Repealed.]

[Paragraph III(d) repealed by 2012, 281:11, I, effective as provided by 2012, 281:17.]

(d) 5,425,866 tons annually applicable to total carbon dioxide (CO<sub>2</sub>) emissions from the affected sources until December 31, 2008.

**Source.** 2002, 130:2, eff. July 1, 2002. 2006, 105:2, I, eff. June 8, 2006. 2008, 182:3, eff. June 11, 2008. 2012, 281:11, I, eff. as provided by 2012, 281:17.